Shoreline Management Guidebook

Second Edition, 1994

WASHINGTON STATE DEPARTMENT OF ECOLOGY

Shorelands & Coastal Zone Management Program

93-104A

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Volume I

Shoreline Administrator's Manual

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PREFACE

The purpose of this *Manual* is to provide local shoreline planners and interested parties with a guide to the "nuts and bolts" of shoreline management. It is intended to further understanding of the laws, regulations, procedures and policies used in the daily administration of shoreline management in Washington. **It is not a substitute for the actual laws or official rules which are the subject of discussion.** Interpretations and policies in this manual are based on the Shoreline Management Act of 1971 [Chapter 90.58 RCW], related rules and regulations [Chapters 173-14, 173-16, 173-17, 173-19 and 173-22 WAC], Shorelines Hearings Board cases, court decisions, Attorney General's Office opinions, and Ecology staff determinations.

The Shoreline Management Act (SMA) is administered through a cooperative program between local government and the state Department of Ecology. Local governments have the primary responsibility for initiating and administering the regulatory programs of the SMA. Ecology provides technical assistance to the local governments with an emphasis on ensuring compliance with the policies and procedures of the SMA and related rules. Technical assistance is provided through work shops and conferences, direct inquiries to department staff and through technical assistance documents.

Technical assistance documents include this *Shoreline Administrator's Manual,* Volume I of Ecology's two-volume *Shoreline Management Guidebook;* and the *Shoreline Master Program Handbook*, Volume II of the *Shoreline Management Guidebook.* These documents as well as related laws and regulations are available from the Department of Ecology Shorelands Program.

Ecology welcomes comments on the Second Edition of the *Shoreline Administrator's Manual.* Please forward your comments to Peter Skowlund, Ecology Shorelands and Coastal Zone Management Program, P.O. Box 47690, Olympia, Washington, 98504-7690.

ACKNOWLEDGMENTS

This document was produced by the Washington State Department of Ecology Shorelands and Coastal Zone Management Program, Rod Mack, Program Manager. Special recognition goes to all Shorelands Program staff who participated in the project. Tom Mark and Peter Skowlund were the principal staff persons developing shoreline management concepts and directing the work. Consultant team members included John Owen, Rebecca Rudd and Karin Chew of MAKERS Architecture and Urban Design.

The Department also would like to acknowledge the participants from local governments, associated agencies and consulting firms that participated in the state-wide workshop in Seattle, April 19 and 20, 1992, and who reviewed draft materials and helped define shoreline management issues.

This publication was funded in part by the National Oceanic and Atmospheric Administration. The views expressed herein are those of the authors and do not necessarily reflect the views of NOAA or any of its subagencies.

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Shoreline Management's Administrative Framework

The Shoreline Management Act's Legal Foundation

The authority to carry out the provisions of the Shoreline Management Act (SMA) is derived directly from the Constitution of the State of Washington and from the common law principle known as the Public Trust Doctrine.

The Constitution of the state and the U.S. Constitution provide both the authority for conducting the activities necessary to carry out the Shoreline Management Act and significant limitations on that authority. The basic authority comes from the police power provision. This allows the state government and, by delegation from the state, local government, to adopt and enforce laws to protect the public health, safety and general welfare.

Limitations come in the form of the due process provisions. Government activities that constrain private options have to be conducted according to a set of rules that assures an opportunity for participation by the affected parties. The Shoreline Management Act and local shoreline master programs comply with this requirement by establishing extensive rules for general public and individual participation in the process of making the rules (i.e. adopting and amending SMPs) and deciding on individual permits. In addition to establishing rules, adherence to the rules in the decision making process is fundamental to assuring that any decision will withstand legal challenge.

Finally, the constitution prohibits the government from taking private property without compensation. The meaning of this provision is perhaps the most debated issue in land use law. Its meaning is clear in cases of condemnation or other acquisition for public use: government must pay the fair market value. It is also reasonably clear that most common forms of regulations that impose limitations on the use of property, reasonably related to protection of the public, do not require compensation even where there may be a significant diminishment of property value. However, the courts have indicated that there is a point where use limitations on an individual piece of property require compensation. For example, an important recent Supreme Court decision (Lucas v. South Carolina Coastal Commission) determined that a regulation that had the effect of "eliminating all economic use" was a "taking" of that property.

The Shoreline Management Act addresses the takings issue by identifying the public purposes served by its implementation and making provision for appropriate flexibility in its implementation. Individual master programs also need to be drafted with the taking issue in mind.

The Public Trust Doctrine is a legal principle with roots in the Roman Empire but more directly derived from English Common Law. The essence of the doctrine (as most recently articulated by the State Supreme Court) is that the waters of the state are a public resource, owned by, and available to all citizens equally for navigation, fishing, recreation and similar uses.

This trust is not abrogated by private ownership of the underlying land, and in fact the underlying land is permanently encumbered by the public trust. Protection of the trust is a duty of the State, and the Shoreline Management Act is one of the primary means by which that duty is carried out. Though there is clearly no right on the part of property owners to fill or otherwise encumber the water surface, the doctrine does not dictate that no land be filled or dedicated to a specific use. It does require a careful evaluation of the public interest served by any action proposed. This requirement is fulfilled in part by the planning and permitting requirements of the Shoreline Management Act.

Look It Up!

Look it up! See the *Shoreline Public Access Handbook* and the *Shorelines Hearings Board Digest of Decisions* for references on the concepts of public trust, takings, liberal construction, and other legal concepts associated with shoreline management in Washington state.

Look It Up!

Look it up! The Public Trust Doctrine is thoroughly investigated in a WASHINGTON LAW REVIEW, article entitled *The Public Trust Doctrine And Coastal Zone Management In Washington State* (July 1992, Volume 67, page 521), which should be available at any law library. Similarly on a national level, *Putting The Public Trust Doctrine To Work*, by David Slade (November 1990) looks at the issue from a national perspective.

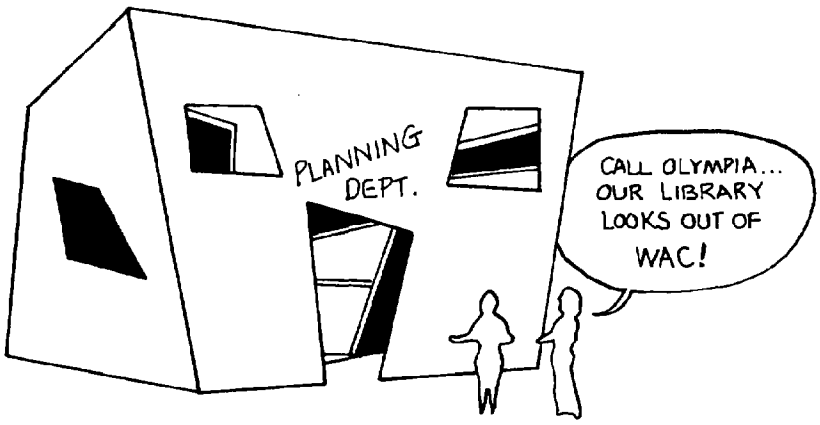
The Shoreline Management Act provides the legal authority to the Department of Ecology to adopt regulations which interpret and foster implementation of the act. The Department of Ecology's formal regulations for implementation of the Shoreline Management Act are contained in Chapters 173-14, 173-16, 173-17, 173-18, 173-19, 173-20 and 173-22 WAC.

Local administrators of shoreline programs are most likely to concentrate on Chapters 173-14, 173-17 and Chapters 173-22 WAC. Chapter 173-14 WAC, Permits for Developments on Shorelines of the State, establishes rules for the administration and enforcement of the permit system of shoreline management. Chapter 173-17, Enforcement Regulations sets out the state and local authority policy and procedures related to enforcement actions. Chapter 173-22, Adoption of Designations of Wetlands Associated with Shorelines of the State, designates the wetland areas associated with the streams, lakes and tidal waters which are subject to the provisions of the Shoreline Management Act.

Rules designating rivers and lakes that are shorelines of the state and shorelines of state-wide significance are found in WAC 173-18, Streams and Rivers Constituting Shorelines of the State, and in WAC 173-20, Lakes Constituting Shorelines of the State. As will be addressed later, because of the criteria for designation in the Act, these lists are not legally definitive on whether a stream or lake is in jurisdiction and on where the stream jurisdiction begins.

Special Tip

Tip: Make sure the latest versions of relevant regulations and laws are on your desk. Local jurisdictions are responsible for administering current versions of the state regulations, which may differ from your SMP language if it has not been recently revised. If you're not sure whether you have an up-to-date copy of the SMA and related WACs, call or write Ecology's Shorelands Management Section in Olympia and ask for what you need.

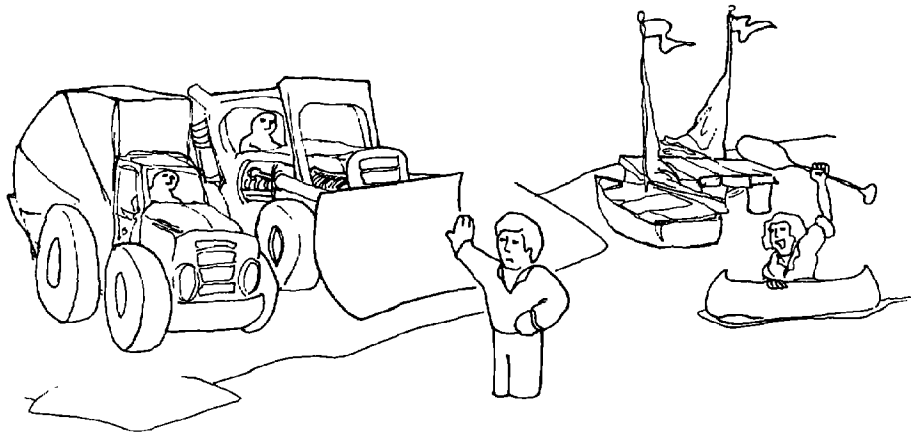


"To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shorelines." (See RCW 90.58.020.)

More specifically, priority is given for:

"...single family residences, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to the shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state."

In a nut shell, preference is given to shoreline uses that are water-dependent or water-related, provide public access and recreational use of the shoreline, as well as other uses which provide an opportunity for substantial numbers of people to enjoy the shoreline and to single family residences. (See RCW 90.58.020.)



Priority Uses and Discouraged Uses of Shorelines

The concepts of **water-dependent, water-related and water-enjoyment uses** has been developed to provide the crucial elements in the decision making for shoreline areas where there are competing potential uses, and also within the individual components of any particular proposal.

A **water-dependent use** is one which requires direct contact with the water and cannot exist at a non-water location due to the intrinsic nature of its operations. Examples of water-dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities, and sewer outfalls.

A **water-related use** is a use which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a waterfront location. Examples of water-related uses may include warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker, and log storage.

Water-enjoyment uses are recreational uses, or other uses facilitating public access to the shoreline as a primary characteristic of the use; or uses that provide for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general character of the use and which through their location, design and operation assure the public's ability to enjoy the physical and aesthetic qualities of the shoreline. Examples may include parks, piers, museums, restaurants, educational/scientific reserves, resorts, and mixed use projects.

It should be noted that the use preference does not exclude other uses nor does it require that preferred uses be allowed everywhere. It does require that in planning for the shoreline and in making the daily decisions implementing the Act that all uses must be closely scrutinized to assure that they are reasonable and appropriate in a given setting and that other uses do not act to exclude preferred uses in those areas uniquely suited to their location.

Protection of Public Rights

The act states:

> *"This policy is designed to insure the development of these shorelines in a manner which, while allowing limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest."*

3. *Result in long-term over short-term benefit.*

4. *Protect the resource and ecology of the shoreline.*

5. *Increase public access to publicly owned areas of the shorelines.*

6. *Increase recreational opportunities for the public in the shoreline.*

7. *Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.*

Public Participation in Decision Making

The one clear policy of the act that is not established directly in RCW 90.58.020 is the policy that all decisions related to the shorelines should be made with full opportunity for public participation.

The Federal Coastal Zone Management Program

The U.S. Congress enacted the **Federal Coastal Zone Management Act of 1972**. The Federal Coastal Zone Management Program encourages a system of state programs that provide for the management of the coastal zone on a coordinated and consistent basis, supported in part by federal funding. Partly because it already had a statewide shoreline management program in place, the State of Washington was the first state to gain federal approval of its coastal zone management program (in 1976). Washington's Coastal Zone Management Program covers the fifteen counties in western Washington bordering on salt water. The CZMA is administered by the National Oceanic and Atmospheric Administration (NOAA) at the federal level and within the state of Washington by the Department of Ecology.

One of the benefits of participation in the CZM program is that within the coastal zone, federal projects and projects that require federal permits (e.g. Corps of Engineers Section 10/404 permits) must meet the consistency requirements of the Federal Coastal Zone Management Act. Under the Washington CZMP this means consistency with the SMA and other state environmental regulations. An additional benefit is that federal funding is

available to jurisdictions within the Coastal Zone through the Department of Ecology for a variety of activities that promote goals and policies of the CZMA.

Look It Up!

Look it up! Refer to the Federal Coastal Zone Management Act, 16 USC 1451 et seq. See also the sections in this manual on federal consistency requirements and SMA jurisdiction over federal and tribal lands.

The master program has certain characteristics in common with a comprehensive land use plan, a zoning code and a building code. The master program establishes policies to guide decisions about development, like a comprehensive plan. Like a zoning code, it is a comprehensive use regulation - and administration of it requires consideration of (and, of course, consistency with) the program any time that a use is proposed to be established, whether or not a shoreline permit or other authorization is required. Like a building code, the requirement to obtain a (substantial development) permit is not linked to how the use or activity is treated by the master program (code). If the project involves "substantial development" as defined in the SMA, then a permit is required.

The point of all this is to assure that the shoreline is managed comprehensively. The Act, and the master programs, address both what uses are made of the shoreline and how those uses are built and conducted over time.

An additional purpose of the system is to assure the ability of the public to participate in the decisions about shoreline use and development. Thereby, the SMA establishes requirements for public notice and review opportunities in the development of master programs or amendments to them and in association with the review of individual projects through the permit process.

Geographic Applications of the SMA

The Shoreline Management Act applies to the following geographical shoreline areas [RCW 90.58.030(2)]:

1. All marine waters of the state, together with the lands underlying them, out to the western state boundary in the Pacific Ocean (the three-mile limit).

2. All freshwater areas of the state, together with the lands underlying them, except:

    a. Streams and rivers with a mean annual flow of less than 20 cubic feet per second (cfs), Please note that a stream may go dry part of the year and still be a shoreline as long as the 20 cfs mean ANNUAL flow is met; and

b. Lakes and reservoirs less than 20 acres in area. (The area used to make this determination is defined by a continuous ordinary high water mark and may include vegetated areas as well as open water areas.)

3. "Associated wetlands" of these shorelines.

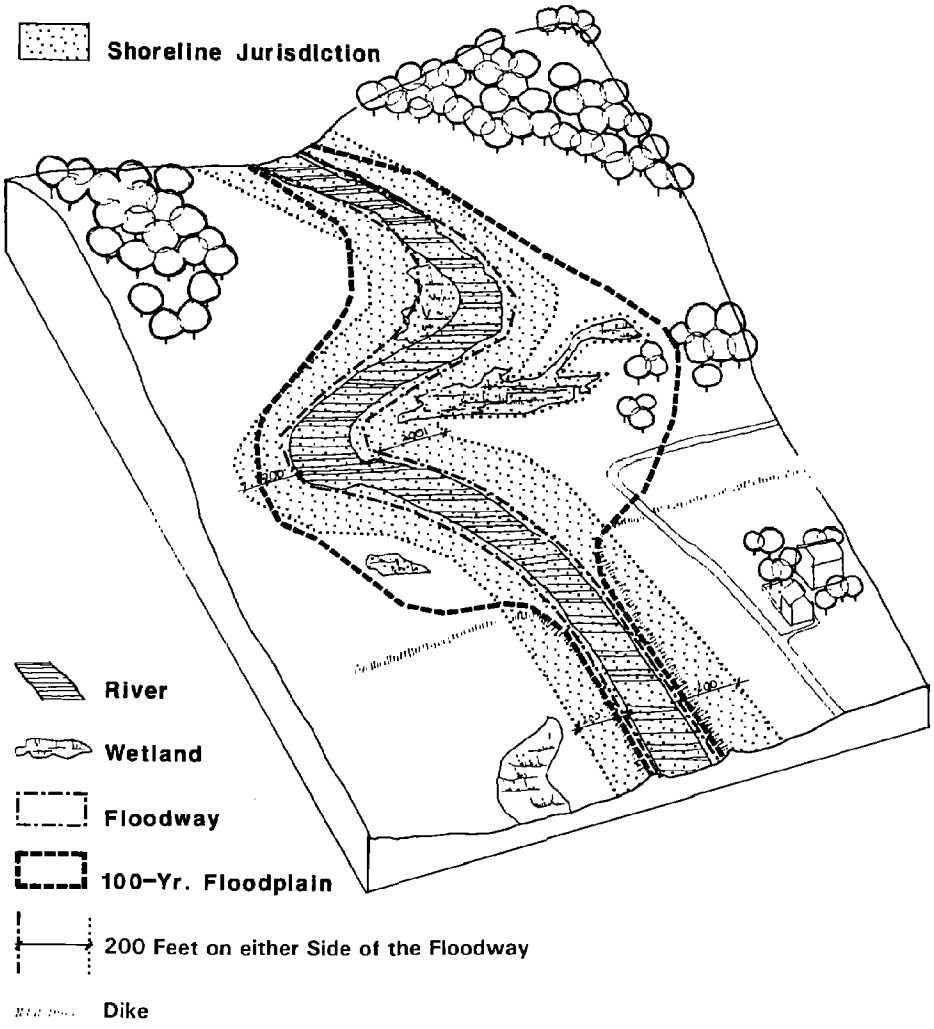
Special Tip

Tip: You may see terms such as "shoreline district", "shoreline area", "waterfront" or others, used to refer to the geographic area covered by the Shoreline Management Act. To avoid confusion, the Department of Ecology uses **"shoreline jurisdiction"** to refer to the total legal area of coverage of the SMA.

Special Tip

Tip: Local shoreline jurisdiction extends waterward from the shoreline to the city or county limit in the water.

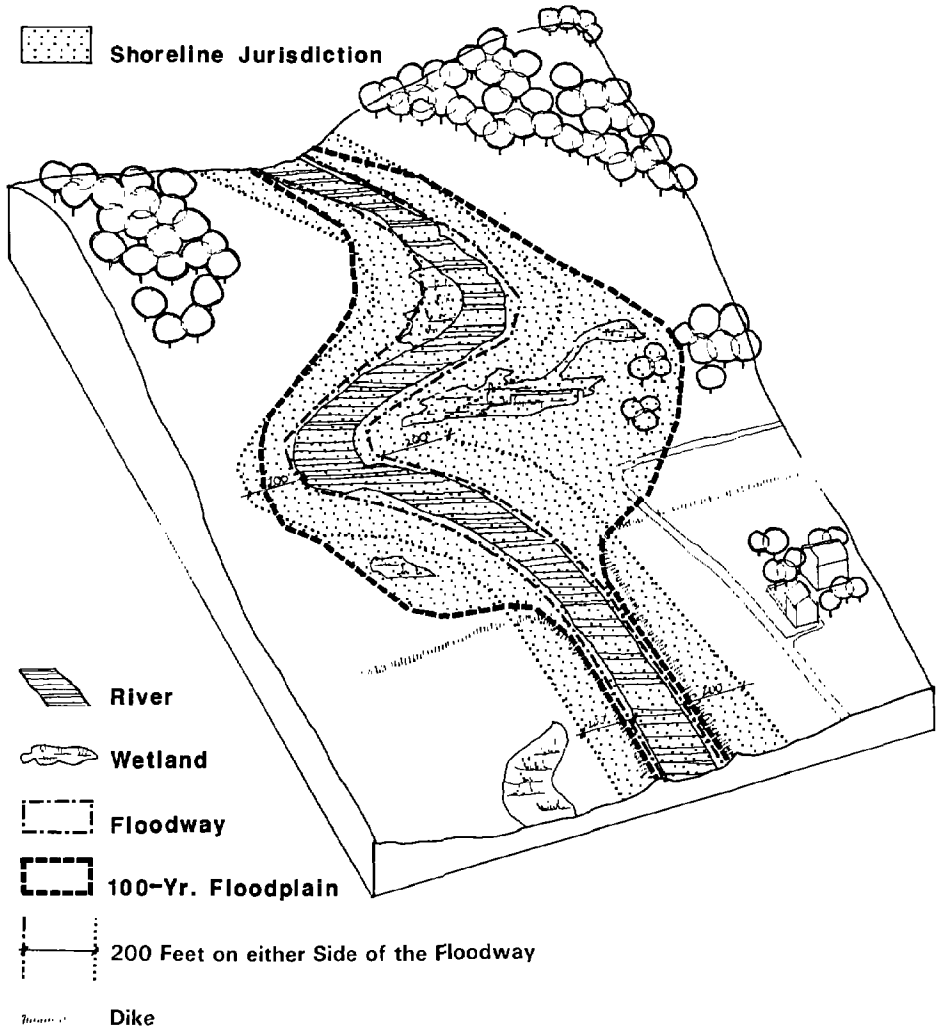
OPTION 1



Shoreline jurisdiction includes all lands within 200' of floodway or OHWM (whichever is greater), plus all marshes, bogs and swamps in the 100-year floodplain

Figure 2-2. Options for Setting Shoreline Jurisdiction (Page 2 of 4)

OPTION 2



Shoreline jurisdiction includes all lands within 200' of floodway or OHWM (whichever is greater), plus the entire 100-year floodplain

Figure 2-2. Options for Setting Shoreline Jurisdiction (Page 3 of 4)

Shoreline Classifications

Non-SMA waters - These are the small streams, ponds and lakes that don't fall under SMA jurisdiction.

Shorelines of the State - Provisions of the Act apply to all "shorelines of the state" including two types of shorelines for administrative and management purposes: "**shorelines of state-wide significance**" and "**shorelines**":

1. **Shorelines of State-wide Significance** (SSWS) - a select group given special priority by the Act.

2. **Shorelines** - areas covered by the Act but not highlighted as of special importance to all the people of the state.

An easy way to remember these SMA terms is:

Shorelines of the State = Shorelines + SSWS

"Shorelines of State-wide Significance" are geographically defined as follows [RCW 90.58.030(2)(e)]:

1. **The Pacific Ocean coastline** (Cape Disappointment to Cape Flattery) of the state, including harbors, bays, estuaries, and inlets seaward from the ordinary high water mark **and** all wetlands associated with these waters;

2. **Nisqually Delta, Birch Bay, Hood Canal, Skagit Bay, and Padilla Bay,** waterward from the ordinary high water mark **and** all associated wetlands;

3. All other areas of **Puget Sound and the Strait of Juan de Fuca** and adjacent salt water areas lying **waterward of the extreme low tide line** (**not** including the adjacent tidelands or uplands);

4. **Lakes** over **1,000 acres** in area **and their associated wetlands**;

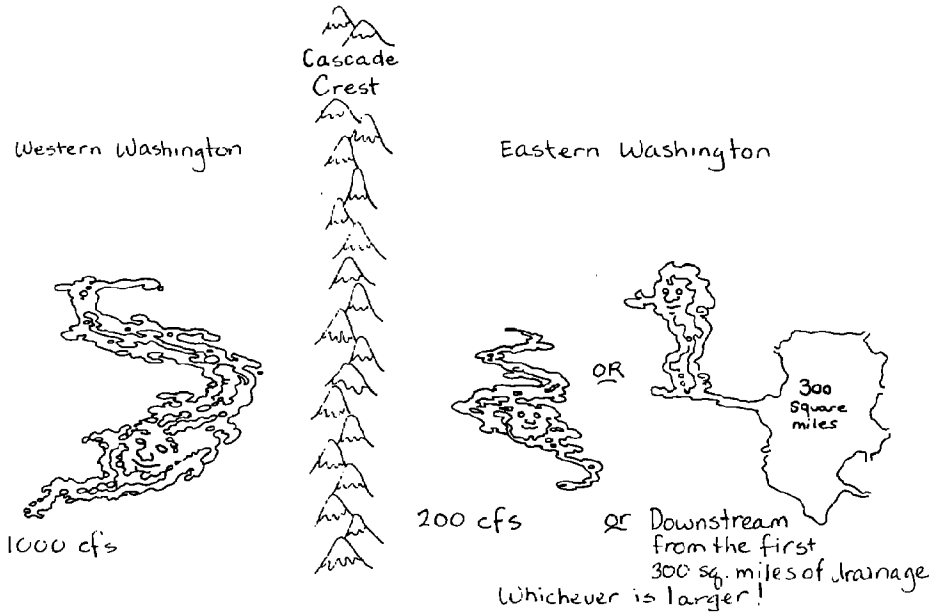
5. **Rivers,** or segments thereof, **and their associated wetlands, which** meet one of the following criteria:

   a. **West of the Cascade crest** - A mean annual flow of at least **1,000 cubic feet per second**.

b. **East of the Cascade crest** - Either:

i. A **mean annual flow** of **200** cubic feet per second **or** more; or

ii. The portion downstream from the first 300 square miles of drainage area.



Special Tip

Tip: It is a good practice to list and draw all the SSWSs including tidelands, floodways, floodplains, uplands, etc. on a reference map and make it a part of your permit review to check it when a proposal is first received.

Special Tip

Tip: In reviewing permits for areas designated as Shorelines of State-wide Significance, you need to demonstrate that the use priorities for these areas were specifically considered and evaluated by the local jurisdiction. Review of the permit decision (e.g. by the Shoreline Hearings Board) will look at whether the issue of state vs. local interests, for example, was specifically addressed. Remember that these priority tests usually apply to the associated wetlands (uplands and marshes bogs and swamps under jurisdiction), as well as the SSWS water areas. Keeping a reference list and map of the extent of all the SSWSs will help remind staff of this consideration.

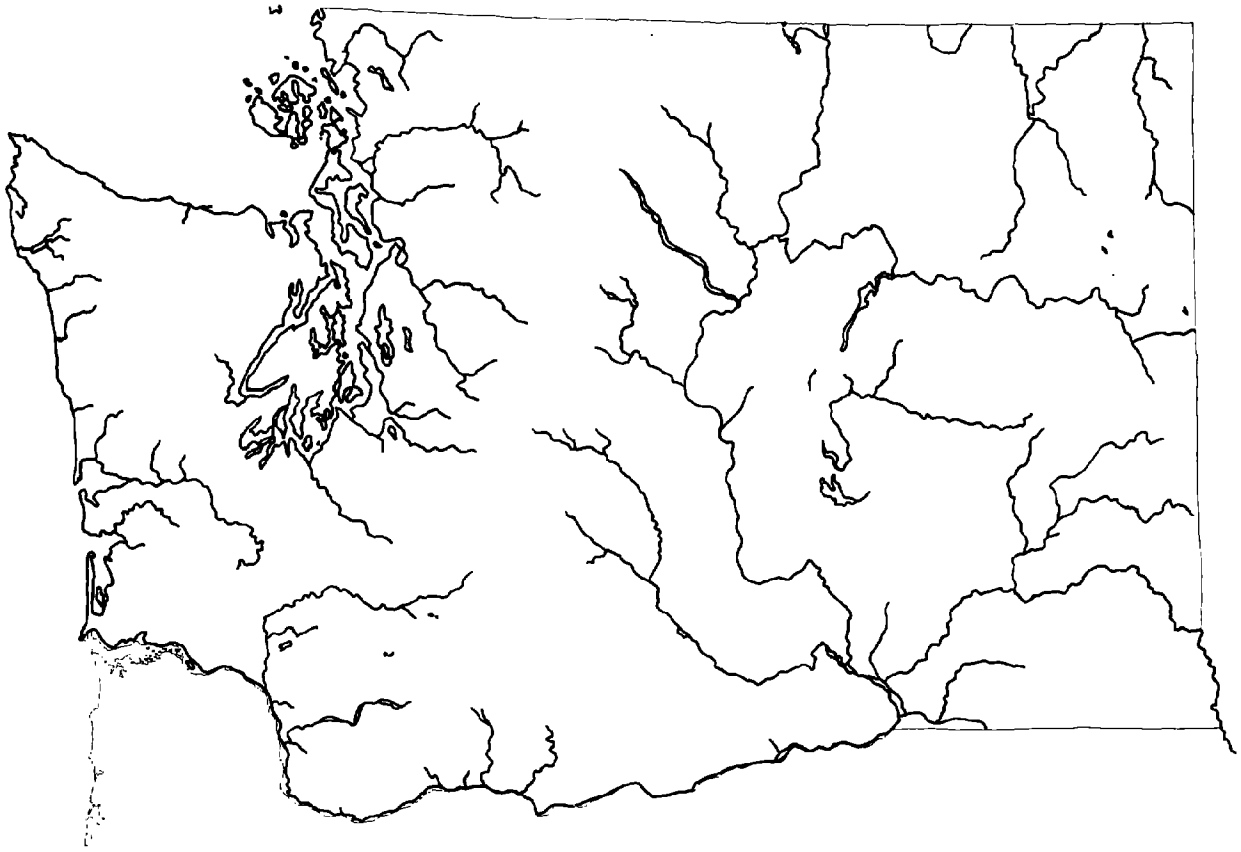


Figure 2-3. Shorelines of State-wide Significance illustrating state-wide coverage.

Associated Wetlands or Associated Marshes, Bogs, and Swamps

The land areas bordering the shorelines of the state that are under the jurisdiction of the act are defined in the act as **"wetlands"** See RCW 90.58.030 (2)(f). These areas are also referred to in the act as "associated wetlands."

Under the SMA the **terms "wetlands" and "associated wetlands"** do not refer exclusively to **biological wetlands,** which are referred to as "**associated marshes, bogs and swamps**". See WAC 173-22-030 (5), and -040 (1b, 2b, 3c). All land areas above (landward from) the ordinary high water mark that are under jurisdiction are defined as "wetlands". This may include very high dry land if it meets the terms of the definition. From the perspective of the 1990s, this is an unfortunate bit of legal shorthand that causes confusion for nearly everyone because of the now common usage of the term "wetlands" when referring to biological wetlands.

In reviewing a project, your master program should be carefully reviewed to determine if the term "wetlands" means "shoreline jurisdiction" or "biological wetland" in the specific circumstance under review.

Two Definitions of "Wetlands": Jurisdictional and Biological

"Associated wetlands" include:

1. All lands extending landward 200 feet in all directions as measured on a horizontal plane from the **ordinary high water mark**; and

2. Floodways and contiguous floodplain areas landward 200 feet from such floodways; provided that local government may, within its master program, include a greater area within the floodplain up to and including the entire 100 year floodplain; and

3. All **marshes, bogs, and swamps,** associated with the streams, lakes and tidal waters of the act including, at a minimum, those located within the 100 year floodplain; and

4. River deltas associated with the streams, lakes and tidal waters of the act except for those lands protected from floodwaters by authorized flood control devices.

Special Tip

Tip: Detailed guidance on determining the ordinary high water mark and identifying associated marshes, bogs and swamps is found in Chapter 3 of this manual.

Special Tip

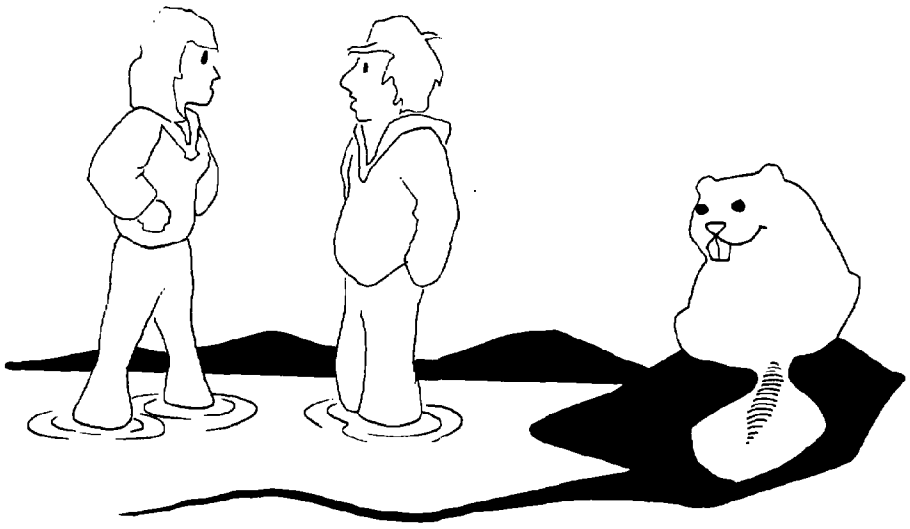
Tip: Most local SMPs include the entire 100-year floodplain in the shoreline jurisdiction. However, under amendments to the SMA in 1975, local governments were given the option to designate the extent of jurisdiction within the floodplain to include, at a minimum, the floodway plus 200 feet and all associated marshes, bogs and swamps including, at a minimum, those located within the 100-year floodplain. Check your SMP to see how "associated wetland", "wetland", floodplain/floodways are defined for your area. Changing the area that your SMP applies to requires an amendment to the SMP including approval by Ecology.

Special Tip

Tip: Marshes, bogs and swamps located within a 100-year floodplain remain within shoreline jurisdiction despite changes to an SMP to exercise the "floodway plus 200 feet" option. Thus, activities in these biological wetland areas are regulated by the SMA and local shoreline master programs.

Special Tip

Tip: Note that naturally occurring and manmade alterations of the shoreline can result in modifications in the boundary of shoreline jurisdiction. Examples of such alterations include permitted manmade changes such as landfilling and dredging, flood control projects, and natural changes due to landslides, flooding, channel alterations, or river course changes. See RCW 90.58.030(7).

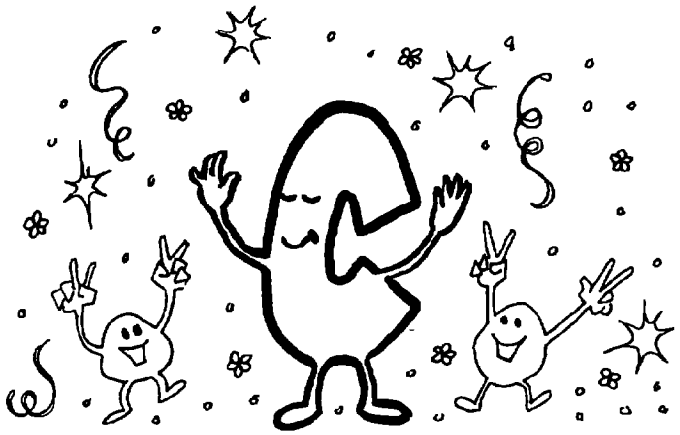


"What lake? It wasn't here last week?"

Look It Up!

Look it up! The Department of Ecology has codified **designation criteria for associated wetlands** as **Chapter 173-22 WAC**, Adoption of Designations of Wetlands Associated with Shorelines of the State. Although Ecology maintains maps designating shorelines of the state and their "associated wetland" (jurisdictional) areas (WAC 173-22-060), the areas within 200 feet of the ordinary high water mark and/or floodways as well as 100 year floodplains and marshes, bogs, swamps, and river deltas are not always mapped in detail. Site specific analysis and expert assistance from Ecology and other agencies can help local government to determine the exact shoreline jurisdiction. Training is also available from Ecology on locating the OHWM and on delineation of wetlands.

Please note that Ecology is the agency designated within the SMA as being responsible for determining shoreline jurisdiction [RCW 90.58.030(2)(f)]. While day to day administration requires local government to make these determinations, if you are in doubt, contact the Department of Ecology.



The criteria prevail!

Special Tip

Tip: In determining shoreline jurisdiction, the criteria described in Chapter 173-22 WAC prevail over any lists, maps, or inventories (WAC 173-22-055). For example, to determine if a stream falls under the SMA, first check Chapter 173-18 WAC to see if it is listed. If it is not listed and there is reason to believe that the water body may be in jurisdiction, proceed with a determination in consultation with the Department of Ecology. If a stream has a mean annual flow of 20 cfs or more or a lake is 20 surface acres or more, it falls under SMA/SMP jurisdiction even though it has not been officially catalogued. Any area that meets the criteria in RCW 90.58.030 (2)(f) and (g) and Chapter 173-22 WAC automatically falls under shoreline jurisdiction.

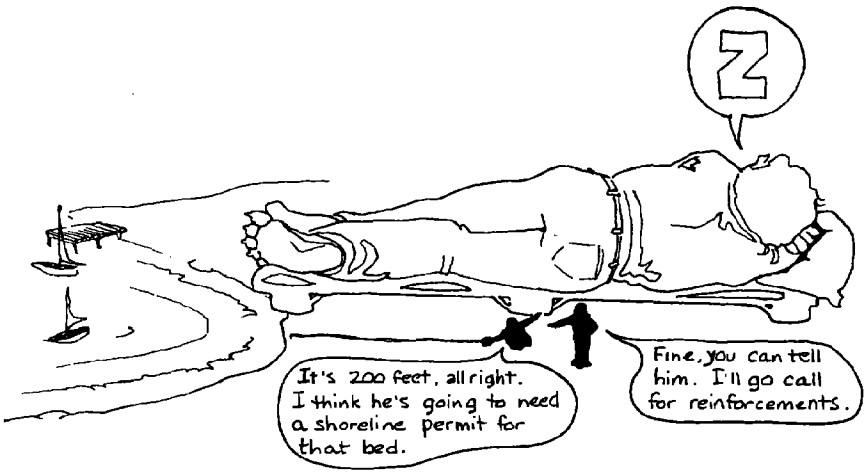
Special Tip

Tip: You need to distinguish between the use of "ordinary high water mark", which as defined in the SMA is a soil and/or vegetation mark, and "ordinary high water" or "mean high water", which are measurements of average water elevations at a particular location. Unlike tidal elevation indicators used for other regulatory programs (notably the Corps of Engineers' Section 10/404 permit program), the SMA uses the "ordinary high water mark", as defined in RCW 90.58.030 (2)(b). See Chapter 3.

Adjacent Lands

The Shoreline Management Act requires that local governments and other agencies review policies and regulations that apply to **adjacent lands**, that is, lands under their jurisdiction that are adjacent to shorelines of the state "**...so as to achieve a use policy on said land consistent with the...**" **Act and the SMP**. In other words, comprehensive plans and zoning must be consistent with the SMP provisions, environmental designations, and maps. See RCW 90.58.340.

Shoreline permits for project sites that include land in shoreline jurisdiction as well as adjacent areas should include consideration of the impacts of the entire project. The permit should address the portion of a project outside the shoreline area to the extent that it causes, or contributes to, shoreline impacts and should include consideration of the total project's consistency with the policies of the Act and the SMP.



Special Tip

Tip: For projects only partially located within shoreline jurisdiction, the shoreline permit must incorporate consideration of the **entire integrated project** and a determination of consistency with the policies of the SMA and the local SMP must be made, only the portion within the shoreline jurisdiction must meet local SMP regulations and standards (e.g. height limit, lot coverage, etc.). Remember, to the extent that it may cause shoreline impacts, the whole project must be consistent with the policies of the SMA and the local SMP.

Federal Activities

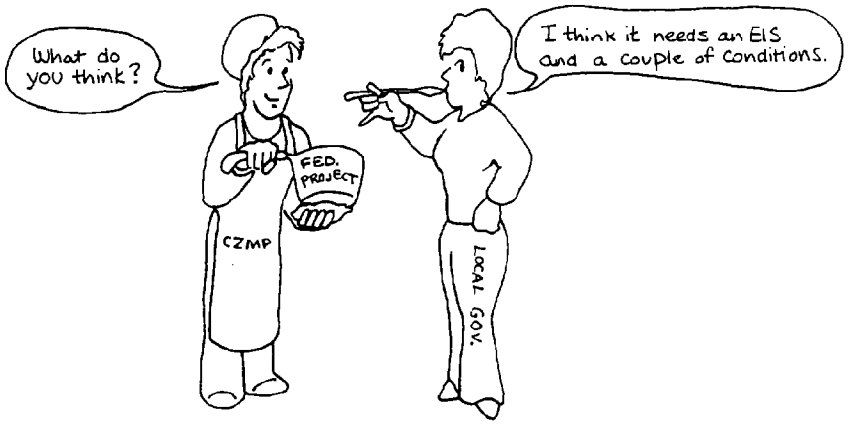
Application of Shoreline Permits to Federal Lands and Activities

The requirements of the SMA clearly apply to private projects on privately owned lands, and to private, local government, and state government actions on local or state government lands. The application of the SMA to federal activities or lands is a very complex issue involving interpretation of the U.S. Constitution, federal laws and regulations.

The general rule is that the federal government is immune to state and local permits. However, Congress has waived this federal immunity under certain circumstances. For example, the Federal Clean Water Act requires federal agencies to get state dredging and water quality permits. The federal courts have held that shoreline permits are dredging and water quality permits. So federal agency projects that require dredging or that affect water quality require shoreline permits. The Coastal Zone Management Act also provides for state (and thereby local) review of federal projects.

"Let's see your permit."

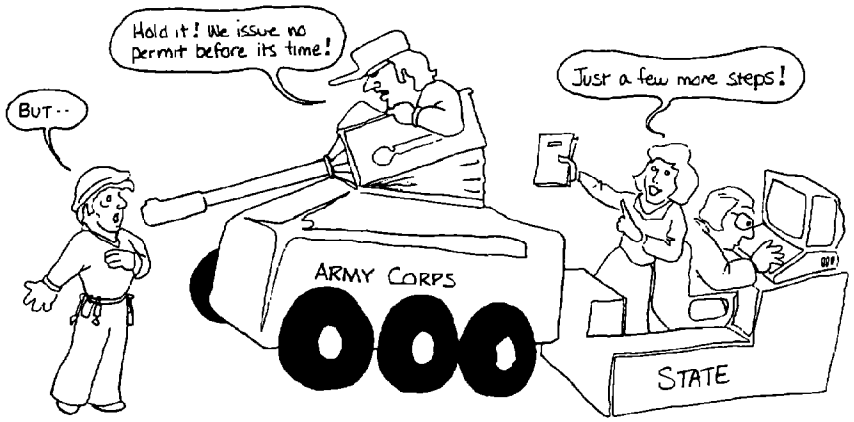
The Shoreline Management Act regulations help permit administrators decide if a shoreline permit is required. WAC 173-14-062(a) provides that federal agencies do not need to get shoreline permits on land they own in fee unless the federal government reserves substantial jurisdiction to state and local governments. For example, the National Park Service is not required to get shoreline permits for projects within a National Park while the Navy would need a permit for a pier project even on land (submerged) that they own because it would affect state waters and the Clean Water Act "reserved substantial jurisdiction" to the state on water quality matters.



Testing for Consistency

Federal agencies do need shoreline permits for developments on lands under lease, easement or license to the federal government (WAC 173-14-062). For example, if the Coast Guard was leasing a storage area from a citizen, new substantial development on the site would require a shoreline permit. (The U.S. Court of Appeals for the Ninth Circuit has, in dicta, indicated that this rule is binding on federal agencies.)

WAC 173-14-062(2) requires private parties, local governments and state agencies to get shoreline permits for projects on federal lands. So a private resort or a local or state highway project on National Forest land requires a shoreline permit. Projects on private or state in holdings within federal lands also require shoreline permits.



Special Tip

Tip: Maps produced by the Department of Ecology showing shorelines of the state, and maps produced by the Department of Natural Resources for forest management purposes generally do not show SMA jurisdiction extending into National Forest lands. Before you conclude that a shoreline permit is not required, check the requirements of WAC 173-14-062 and the geographic jurisdiction requirement of the SMA. If in doubt, contact the Department of Ecology.

The Coastal Zone Management Act

While the Clean Water Act has been interpreted by the Courts to require shoreline permits for certain federal activities, the Coastal Zone Management Act (CZMA) provides a more direct and general linkage between the SMA and federal activities. To understand this linkage an explanation of the CZMA is necessary. The CZMA was enacted by Congress in 1972 to promote wise and efficient use of coastal resources. It is a voluntary program. Coastal states that choose to participate develop a program which is submitted to the federal government for approval. Once the program is approved, the CZMA requires that federal agency activities and decisions that affect coastal zone land uses, water uses, or natural resources must be consistent with it. (The consistency requirements can be found at 16 U.S.C. ½ 1456(c) - (d) (Supp. 1991)). Federal activities and decisions that are generally subject to these requirements include, development projects, permits and licenses, grants and loans, Outer Continental Shelf energy activities, and land acquisition and/or management planning decisions. In short, any action that may affect the lands, waters or resources of the coastal zone.

As approved by the federal government, Washington's Coastal Zone Management Program (CZMP) includes the Shoreline Management Act , and the associated regulations (WACs) including the local government shoreline master programs approved under the Shoreline Management Act. It also incorporates the Washington State Environmental Policy Act (SEPA), the Clean Water Act, the Clean Air Act, and the Washington State Energy Facility Site Evaluation Council (EFSEC) Act, among others.

Washington's CZMP defines the coastal zone to include all of Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom counties.

Federal Consistency Certification

The State of Washington must decide whether federal activities and decisions are consistent with the CZMP. Ecology is the agency designated to make this decision which is referred to as consistency certification. The process involved depends on the type of federal action. However, if the terms of the SMA and WAC 173-14-062 indicate that a permit is required for the activity or project which a decision will authorize then consistency certification will not be granted unless a shoreline permit has been obtained.

Federal Activities

A federal activity is any function performed by or for a federal agency. Examples of federal activities include adopting a management plan for a wildlife sanctuary and operating a Coast Guard station, building a military base or purchasing land for a recreation area.

Federal activities that affect any land use, water use or natural resource of the coastal zone must be consistent with the Washington Coastal Zone Management Program to the "maximum extent practicable." Federal regulations define "maximum extent practicable" to mean that the federal activity or project must be fully consistent with the state program unless federal agency compliance is prohibited by an existing federal law. The federal agency sends a consistency determination to Ecology. Ecology has 45 days to agree or disagree.

Federal Permits and Licenses

Many different kinds of private or local or state government projects are subject to federal regulatory requirements and therefore a federal agency must approve a permit or license for the project. Common examples are Corps of Engineer 404 and Section 10 permits and Federal Energy Regulatory Commission licenses.

A federal agency cannot approve a permit or a license for a project that affects the coastal zone unless Ecology agrees that the project is consistent with the CZMP.

For U.S. Army Corps of Engineers Section 404 and Section 10 permits, project proponents apply for a permit from the Corps. The Corps automatically requests certification from Ecology. For other federal permits, the applicant contacts Ecology directly. If Ecology does not respond within six months of receiving the required information, Ecology is presumed to agree that the project is consistent.

Federal Grants and Loans

State and local governments applying for federal grants or loans for projects that affect the coastal zone must request that Ecology review the project for consistency. The applicant must provide the federal funding agency with Ecology's decision. The federal agency cannot approve a grant or loan that is inconsistent with the CZMP.

Outer Continental Shelf Energy Activities

Federal law defines the outer continental shelf as the part of the ocean more than three miles from the shore out to about 200 miles. The outer continental shelf is not part of the coastal zone. However, if energy activities in the outer continental shelf affect the coastal zone, then the activities must be consistent with the CZMP. Energy activities include oil and gas lease sales, exploration, and production.

Appeals

Applicants for federal permits, approvals, grants, and loans can appeal Ecology consistency certification decisions to the Secretary of the U.S. Department of Commerce. The Secretary can overturn Ecology's decision if the Secretary finds the proposal is consistent with the objectives of the CZMA or is in the

interest of national security. Federal agencies can ask the President to exempt an activity from the CZMA consistency requirement.

Look It Up!

Look it up! For more information on the CZMA, a copy of the CZMA, or information on Washington's federally approved Coastal Zone Management Program call or write the Federal Consistency Coordinator, State of Washington, Department of Ecology, P. O. Box 47690, Olympia, Washington, 98504-7690. Telephone (206) 438-7468, SCAN 585-7468.

Application of Shoreline Permits to Indian Reservations

The application of the SMA to land within Indian reservations is a complex legal issue that should be approached with caution and sensitivity.

Indian tribes have the authority to plan for and regulate tribal trust lands and lands allotted to and held in trust for tribal members within their reservations. They also have the authority to regulate land owned by non-members in reservation areas where Indians own significant amounts of land and make up a majority of the population.

State and local governments do not have the authority to regulate tribal trust lands and land allotted to and held in trust for tribal members. So the SMA and shoreline master programs do not apply to these properties. Current case law indicates that the SMA and shoreline master programs may apply to land owned in fee by non-tribal members where non-Indians make up more than half the population and own nearly half the land. However, other circumstances may limit state and local authority over non-Indian land on Indian reservations. In addition, the factors that the courts look to in deciding if local and state governments have authority over land on reservations are unclear and may change. This means that jurisdictional questions require fact specific analysis. Even after such an analysis, the extent of authority may be unclear.

The Department of Ecology recommends a cooperative approach to jurisdictional issues. The Department of Ecology urges local governments to work with Indian tribes and Ecology to cooperatively define the extent of jurisdiction and to coordinate applicable regulations.

Tribal trust lands and lands allotted to and held in trust for tribal members are excluded from the Coastal Zone. However, the Coastal Zone Management Act consistency requirements apply to federal agency activities and on Indian reservations that affect the coastal zone. This requirement also applies to trust lands.

Special Tip

Tip: Policy regarding shoreline management on federal and tribal lands is subject to change due to federal regulations, policy interpretations, and court decisions. For more current information ask the Management Section of the Department of Ecology's Shorelands and Coastal Zone Management Program.

CHAPTER 3

Determining SMA Jurisdiction Boundaries

NOTE: The following guidelines are intended for use in the field and office as a reference. ***These guidelines are not official rules or regulations except as specifically provided in the SMA and related rules and regulations cited herein.*** *Always look to the RCW and WACs first and then use these rules as guidance in applying the regulations on a specific site.*

Ordinary High Water Mark Determinations

The SMA defines the ordinary high water mark (OHWM) as "that **mark** that will be found by examining the bed and banks and ascertaining where the presence and action of waters are **so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation...**" [RCW 90.58.030(2)(b) and WAC 173-22-030(6)].

Determining the OHWM, as evidenced from the preceding language of the SMA, is not exclusively an engineering calculation or a precise scientific endeavor. Although based on empirical evidence as much as is practical, an OHWM determination is a result of a consideration of a variety of biological and hydrological factors, historical patterns, observations and measurements in order to carry out the intent of the SMA. The OHWM on any particular site is **not a static line or level**, such as a surveyed mean tide elevation but rather **is the dynamic edge** of the waterbody under legal jurisdiction of the Act. As such, the OHWM (i.e. the waterbody edge) may change over time due to natural events or as a result of permitted actions. Examples would include: a

river changing course over the years (natural), or a landfill or shoreline excavation for a large marina (manmade).

Determination of the OHWM is of key importance in not only delineating shoreline jurisdiction (200 feet measured from OHWM) but also in applying regulations and establishing setbacks which are usually measured from the OHWM. Many master programs have separate regulations for projects based on whether they are located "upland" (of the OHWM) or are "over/in-water" (waterward of the OHWM).

Special Tip

Tip: For the purposes of the following section, the term "wetland" shall be synonymous with "marsh, bog or swamp" per WAC 173-22-030 (5).

I. General Guidelines For All Water Bodies

A. **Clear Vegetation Mark** - Look for the uppermost clear mark on the bank with respect to vegetation. Often this is where permanent upland vegetation begins at the edge of bare soil. The mark may be defined by a combination of soil, elevation, or channel development.

"Here's where the vegetation changes."

B. **Wetland/Upland Edge** - Look for a clear wetland-upland edge if the wetland is continuous from the water's edge with respect to soils, vegetation, or hydraulic continuity.

C. **Combination Changes** - If a mark is not obvious, look for a change as evidenced by:

1. Change in vegetation as one moves in an upland direction;
2. Increase in land elevation;
3. Landward limit of drift deposition;
4. Soil surface changes from algae or sediment deposition areas to areas where the soils show no sign of depositional processes from the water;
5. Changes in soil profile from wetter or drier conditions (low chroma, high organic matter, lack of mottling) to drier conditions (higher chroma, less organic matter, brighter mottles). Use Munsell Soil Chart.

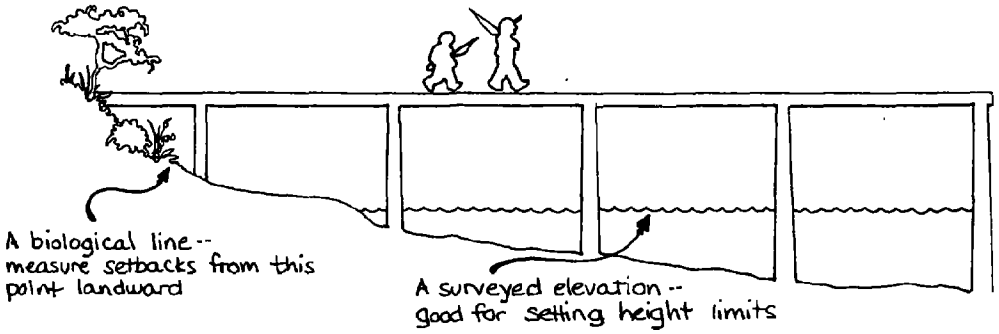
D. **Elevation** - Identify the elevation of the obvious mark and project where appropriate into areas where mark is unclear (such as where disturbance has occurred). Use either your eyes and estimate a level elevation or use a transit or pea level, or use the natural "level" of the water itself when it reaches the targeted benchmark during a high tide or event.

E. **Non-SMA ditches, streams, and pipes** entering SMA waters:

1. Project the OHWM elevation up the channel.
2. For pipes or culverts, project the OHWM elevation through the pipe or culvert if the OHWM elevation connects with another water body at that elevation. Otherwise, cut off OHWM at the downstream end of the pipe or culvert.
3. Tidegates and/or flapgates may complicate the determination and require special evaluation and analysis. Indirect water level influence may be enough to establish associated wetlands in some instances.

Special Tip

Tip: Remember that fresh water can be tidally influenced.



The ordinary high water mark (OHWM) should not be confused with other measures of elevation, water level or tides.

II. Additional Instructions

A. Rivers, Streams, and Creeks are defined as: A naturally occurring body of periodic or continuously flowing water contained within a channel (an open conduit either naturally or artificially created). Excluded are artificially created irrigation, return flow, or stockwatering channels [WAC 173-22-030(8)].

1. Use the **general guidelines** and,

2. **Braided streams** - the OHWM is found on the banks forming the outer limits of the depression within which the braiding occurs [WAC 173-22-030]. The outer limit is usually interpreted to mean the outermost channel which has been active within the last ten years. Also note that there may be "islands" of land not subject to inundation within these outer limits and having their own OHWM.

3. **River Deltas** - those lands formed as an aggradational feature by stratified clay, silt, sand and gravel deposited at the mouths of streams where they enter a quieter body of water. The upstream extent of a river delta is that limit where it no longer forms distributary channels [WAC 173-22-030(7)]. Excluded are lands which can reasonably be expected to be protected by governmental flood control devices [WAC 173-22-040(3)(d)].

4. Where the OHWM cannot be found, use the line of mean high water (WAC 173-22-030). Sometimes gauging station data is useful.

Special Tip

Tip: Use caution in evaluating undercutting or accretion areas that may be the result of abnormal events such as floods, landslides, etc.

B. **Lakes** - a body of standing water in a depression of land or expanded part of a river, **including reservoirs** (20 ac).

1. Use the **general guidelines** and,

2. If the mark is unclear in a reservoir, use the maximum pool elevation then add as appropriate for the effects of waves or other modifiers.

3. In the unlikely event that the OHWM CANNOT be found, use the line of mean high water [WAC 173-22-030 (6)(b)]. Sometimes gauging station data is useful.

C. **Estuarine Area**

1. Use the **general guidelines** and,

2. "The OHWM is coincident with the landward limit of salt tolerant vegetation where such is present." "**Salt tolerant vegetation**" means vegetation which is tolerant of interstitial soil salinities greater than or equal to 0.5 parts per thousand. See WAC 173-22-030(6)(a)(ii).

3. Tidal systems often have dendritic channels (sloughs) which clearly fluctuate and overflow with tidal action. Observing the site during high tide can help in delineating the OHWM.

D. Marine

1. **Low energy marine**: "The OHWM is coincident with the landward limit of salt tolerant vegetation." "Salt tolerant vegetation" means vegetation which is tolerant of interstitial soil salinities greater than or equal to 0.5 parts per thousand. [See WAC 173-22-030(6)(a)(ii)].

2. **High energy marine**:

   a. "Where there is no vegetation cover for less than 100 feet parallel to the shoreline, the OHWM is the average elevation of the adjacent lines of vegetation" [WAC 173-22-030].

   b. If no vegetation occurs on site, look for water marks on piers, pilings, rock or cliff faces. On rocky substrates look for algae, lichen and thalamus species (barnacles) which may be an expression of annual cycles. The upper edge of the black lichen usually coincides with the OHWM.

   c. In the unlikely event that the mark cannot be found, the elevation of mean higher high tide [WAC 173-22-030] may be used. Do **not** use mean or average tide, mean high tide, or mean sea level. Be certain that there is **no** mark to be found.

   d. If no vegetation occurs at a site with drift logs, the OHWM tends to be at the landward edge of the drift pile. Careful evaluation of accretion features and processes (e.g. dunes) is needed prior to making this determination.

   e. Do not use "outliers," annual plant species, or isolated tufts to determine the line of vegetation, since these die back in winter. Look for the **line of persistent vegetation**.

Special Tip

Tip: Be sure to take pictures and make notes to substantiate your OHWM determination. It also can be useful to revisit the site at different tide levels and seasons.

Associated Marshes, Bogs and Swamps Designation Criteria (or, How to Identify Biological Wetlands subject to the SMA)

Special Tip

Tip: In administering the SMA, it is important to distinguish between **jurisdictional** and **biological** wetlands. Jurisdictional wetlands are the "*associated wetlands*" defined in RCW 90.58.030(2)(f), and include both the non-water areas subject to the requirements of the Act and related rules and the marshes bogs and swamps, associated with SMA bodies of water. In other words, these **jurisdictional** "wetlands" are essentially all of the upland areas and marshes, bogs and swamps "associated" with SMA bodies of water. The "associated marshes, bogs and swamps" are actual **biological** wetlands and are a subcategory of the jurisdictional "associated wetlands". Knowing which "wetland", biological or jurisdictional, is intended becomes critical, for example, when a SMP provision "prohibits filling in a wetland area."

The **biological wetlands**, identified as "**marshes, bogs and swamps**" per WAC 173-22-040 (5), are what most people think of when you say "wetland". In this biological context, "associated wetland" means "marshes, bogs and swamps" "associated" with SMA bodies of water. Much confusion in shoreline administration results from difficulty or uncertainty in identifying the marshes, bogs, and swamps "associated" with the streams, lakes and tidal waters of the state. **These guidelines are intended to assist in the designation of marshes, bogs, and swamps that fall under the jurisdiction of the SMA.**

Special Tip

Tip: For the purposes of this section, "wetland" shall mean "marsh, bog or swamp" per WAC 173-22-030 (5).

I. General Guidelines

A. A marsh, bog or swamp is associated if it falls **within 200 feet as measured on a horizontal plane from the OHWM or the floodway**, whichever is more inclusive, of a water body under shoreline jurisdiction. See WAC 173-22-030(10).

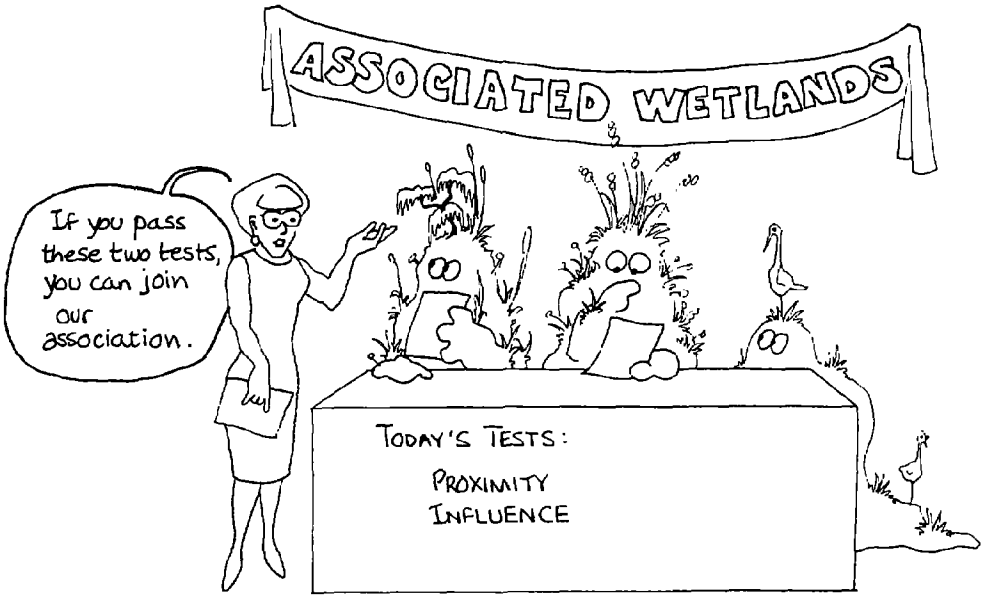
B. The **entire marsh, bog or swamp is associated if any part of it is within the area** described in A., above.

C. The entire marsh, bog or swamp is associated **if any part of it lies within the 100-year floodplain** of a shoreline.

D. The entire marsh, bog or swamp is associated when it is in proximity to and either influences or is influenced by the water body. See WAC 173-22-040(3)(c).

Special Tip

Tip: When a road, dike, or other built barrier is between the marsh, bog or swamp and shoreline, the marsh, bog or swamp is still associated if it meets the general designation guidelines and the tests of influence and proximity. Don't assume that SMA jurisdiction ends just because a marsh, bog or swamp is separated from the shoreline by a road or other structure.



"In proximity" means that the marsh, bog or swamp is close enough to the shoreline to affect or be affected by that shoreline. Proximity is not limited to horizontal distance but can also include consideration of vertical distance. Proximate shorelines can include such situations as:

- a one hundred acre wetland in the floodplain that is two miles away from a water body but that intercepts flood runoff and dampens the flood surge that eventually enters that water body;

- or, a wetland in an overflow channel adjacent to a stream which acts as a flood storage area.

Factors to use in deciding if **"influence"** exists include:

1. Hydraulic continuity, which includes surface and ground water, can be perennial or intermittent and can be a ditch, culvert, or pipe. Intermittent streams flow at some time during a normal year. Indicators of hydraulic continuity include direct surface or subsurface water connection, continuous undrained hydric soil (particularly organic soils), or continuous hydrophytic vegetation. These indicators are evidenced by:

    a. Periodic inundation occurring in a normal year.

        i. Inundation (standing water) or fully saturated soils observed during a normal or drier year.

        ii. Hydrologic gauging data from period record which indicates periodic overbank flows.

        iii. Drift lines, sediment or other materials deposited on vegetation by water.

    b. Tidally influenced geohydraulic features such as:

        i. Dunal systems.

        ii. Spits and jetties.

        iii. Beaches.

c. Tidal inundation as indicated by:

i. Presence of salt-tolerant vegetation.

ii. Interstitial soil salinity of greater than 0.5 parts per thousands.

iii. Tidally formed dendritic channels, particularly with tidal waters in them (fresh or salt).

iv. Drift lines or piles.

d. Connection by a tide gate or a culvert (determine whether the tide gate is functioning).

2. Groundwater recharge and discharge.

a. Spring systems discharging into shoreline.

b. Continuous organic soils with shoreline.

c. Augmentation of low flows in shoreline.

d. Wetlands recharging into sole source aquifer.

3. Stormwater and floodwater detention, such as:

a. Wetland located close to mouth of system.

b. Wetland is significant percentage of detention capacity of watershed.

4. Water quality improvement, filtration and assimilation of sediment, nutrients, and pollutants.

a. Wetland discharges directly into shoreline.

b. Ambient water quality of the shoreline susceptible to degradation, and wetland buffers potential adverse impacts.

c. Specific pollutant source in watershed (point or non-point source) which the wetland is effectively buffering.

d. Is there an unstable sediment source which the wetland is effectively buffering?

5. Erosion control and buffering, such as stability of banks (presence of headcutting or bank erosion), sediment accretion, evidence including:

   a. System in hydrologic equilibrium (watershed currently functioning at capacity, without bank cutting or deposition occurring from altered watershed characteristics).

   b. Urbanization in watershed, altering flow patterns.

   c. Agricultural or forestry development in watershed (particularly with related road systems) altering flow patterns.

6. Food chain support, important to a particular species or habitat within the affected shoreline area, which may include:

   a. Plant species diversity.

   b. Invertebrate diversity.

   c. Faunal diversity.

   d. Fish spawning, overwintering, and rearing habitat (anadromous, wild strain).

   e. Structural diversity-terrestrial: presence of stratified horizontal and vertical canopy layers, including snags and downed wood.

   f. Structural diversity-aquatic: large organic debris, pool: riffle: run ratio, bank overhang.

7. Wildlife habitat important to a particular species or group that use the affected shoreline area.

a. Habitat available for individual species.

b. Breeding/spawning habitat.

c. Overwintering habitat.

8. Wildlife corridors.

a. Connectivity and conductivity of shoreline watershed.

b. Fractionalization of habitat in watershed.

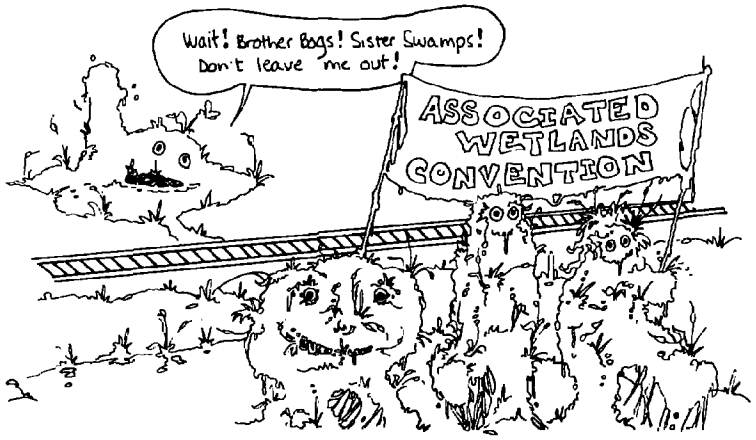
c. Availability of habitat and water in adjacent landscape.

d. Disturbance (noise, presence of people, development in watershed).

II. Special Situations

A. When a wetland is adjacent to or potentially impacted by both a shoreline and a non-shoreline, the rules for determining association with the shorelines apply (see I. General Guidelines, above). If the hydraulic gradient of the wetland is clearly away from the shoreline, then other indications of association must be strongly present.

B. When a non-SMA water body enters the floodplain of an SMA shoreline, the associated wetland extends above the floodplain to the outer limit of continuous hydric soils, hydrophytic vegetation, and/or surface or subsurface hydrology.



CHAPTER 4

Permits and Decisions

Pre-application Meeting

If a development requires a shoreline permit, the applicant must gather and prepare detailed information for a **permit application**. In most if not all circumstances, a meeting between the applicant and appropriate staff to discuss the project prior to preparation of the application is a good idea. Where a project requires approval by other agencies or departments and or is unusual or complex, representatives of these agencies or departments should probably be invited to attend the meeting or a subsequent pre-application meeting.

"That's a great idea!"

At this meeting, staff should explain the process that the application will undergo, identify the applicable policies and regulations, identify the type and extent of information that is necessary to properly and expeditiously process the application. There may also be a discussion of modifications or mitigating measures that will improve the chance that the application will move smoothly through the process. All parties are usually well served in these informal exchanges of information and many future conflicts can be avoided prior to the submittal of an formal application with its attendant expectations, fees and time crunch.

Permit Application; Submittal Requirements

The shoreline permit application **must define the proposal and the site with as much detail as possible**. WAC 173-14-110 describes the **minimum** information required in a shoreline permit, and provides a sample form to be used by local governments.

Special Tip

Tip: The person reviewing the proposal at Ecology (and at other resource agencies) may not have the benefit of familiarity with a site or of conversing with the applicant and, therefore, will be relying solely on the information contained in the permit. Try putting yourself in their position and ask yourself "What information would I need to clearly understand the project?"

The **application must include all of the following [data within brackets is strongly recommended]:**

1. **Applicant's name, mailing address, [phone number], and relationship to property** (e.g. owner, lessee, agent, etc.)

2. **Owner's name, [phone number] and address**, if different than applicant.

3. **A vicinity map and text** (include scale/north arrow) i.e. show location relative to surrounding natural features (e.g. bay, spit, etc.) and development (e.g. roads, bridges, businesses, etc.).

4. Text describing the location, [Travel directions and legal descriptions]

   a. Location by 1/4 Section, Section, Township, Range.

   b. Name of water area and/or wetlands proposal is in or near.

5. SSWS - label which areas of waterbodies, wetlands, and/or uplands are Shorelines of State-wide Significance.

6. Shoreline environment designation e.g. urban, rural, etc.

7. Surrounding uses - Describe briefly the existing land use i.e. residential, commercial, agricultural, etc. and improvements adjacent to the site within a reasonable (approximately 1000 foot) radius.

8. Proposed and current use(s), i.e. How is the property used now and specifically how will it be used as a result of this proposal? Is the proposed use in addition to the current use or is it intended to replace the current use?

9. A detailed site plan including:

   a. Scale.

   b. North arrow showing general compass orientation.

   c. Site boundary and property dimension in vicinity.

   d. Location of OHWM [and setback line].

   e. Clearing - show areas and specify types of vegetation to be removed or altered.

   f. Fill, grading and excavation - illustrate contour changes by area and dimensions, existing and proposed cross-sections, identify off-site fill source or excavation destination, and indicate composition and quantities.

   g. Proposed and existing structures - show locations, profiles and dimensions including height.

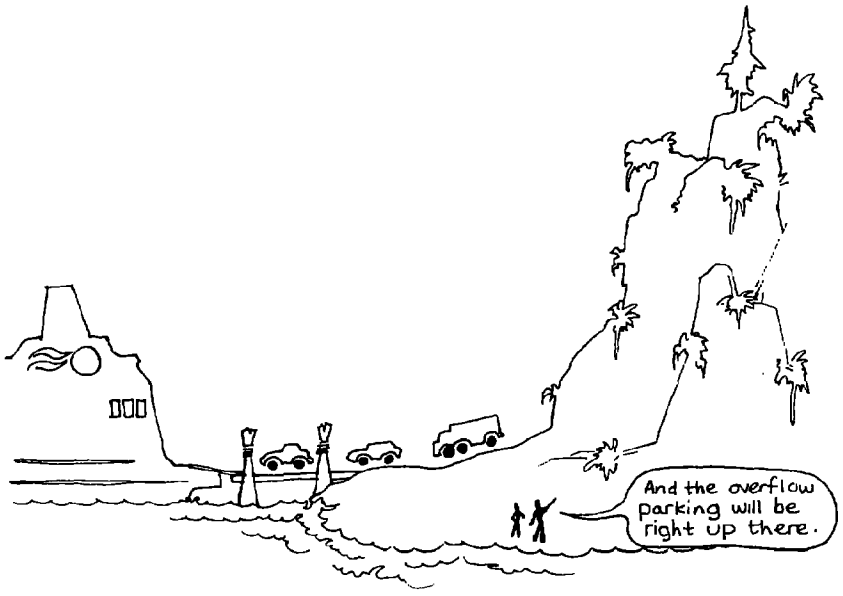
   h. Utilities i.e. locations and dimensions of existing and proposed water, sewer, septic systems (indicate health department approval) roads, power, phone, etc.

The responsible local official must complete the following three items on the application:

1. Nature of the existing shoreline - Is it low or high bank, erosion or accretion beach, floodway or floodplain, wetlands, rocky, etc.

2. If any of the proposed structures will be higher than 35 feet above average grade level, indicate the location and number of existing and potential residential units whose views will be obstructed.

3. For conditional uses and variances, reference explicitly the section of the master program allowing the CUP or, for variances, the sections from which the variance is sought.



The application **must** specify whether a substantial development permit, a conditional use permit, and/or a variance permit is required.

SEPA

The jurisdiction must document compliance with the State Environmental Policy Act (SEPA). Some projects will require an environmental impact statement (EIS); others a determination of nonsignificance (DNS) and environmental checklist, or a determination of categorical exemption. Compliance with SEPA, including all review or waiting periods, is required before a decision on an application can be made.

The shoreline permit application and SEPA analysis should identify future uses intended for the site to avoid the possibility of piecemeal or inappropriate phasing of development.

Special Tip

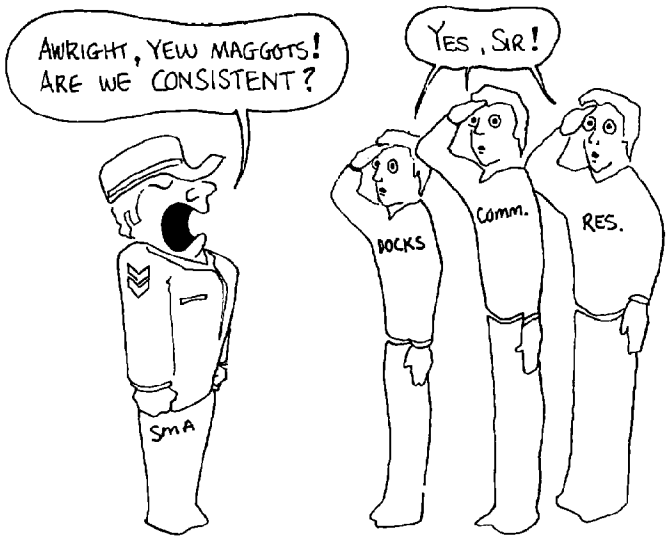
Tip: For permit applications, the more detail that is included from the outset, the better for all concerned. The primary reason for permits being returned to local government from Ecology is inadequate information and/or ambiguous drawings which do not meet the minimum legal standards. Detailed site plans and graphics are especially useful. Be thorough!

Special Tip

Tip: A sample shoreline permit submittal checklist appears in Appendix 1 of this manual. Use this checklist as a guide to assuring that submittals for a shoreline permit are complete.

Development or Substantial Development?

All developments and uses within the shorelines of the state must be consistent with the policies of Shoreline Management Act and the requirements of the local shoreline master program. Only those actions defined by the Act as "substantial developments" require a substantial development permit (SDP).



"Are we all in line with the provisions?"

Special Tip

Tip: Conditional use and/or variance permits may still be required of development that is not substantial development.

The two "development" terms are defined in RCW 90.58.030 as follows:

"Development" means **a use** consisting of:

- The construction or exterior alteration of structures
- Dredging
- Drilling
- Dumping
- Filling
- Removal of any sand, gravel, or minerals
- Bulkheading
- Driving of piling
- Placing of obstructions

OR:

- Any project of **a permanent or temporary nature** which **interferes with the normal public use of the surface of the waters** overlying lands subject to this chapter at any state of water level.

"Substantial development" means any **development** of which the total cost or fair market value exceeds two thousand five hundred dollars ($2,500).

OR:

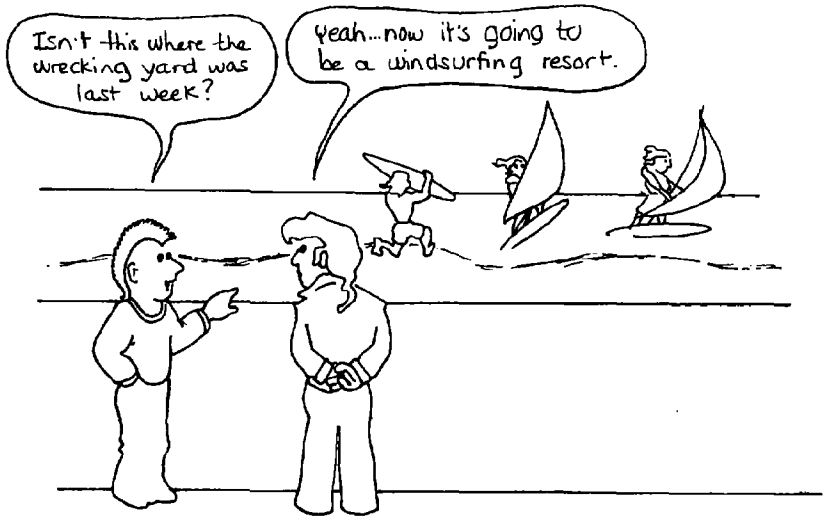
- Any development which **materially interferes** with the normal public use of the water or shorelines of the state.

Special Tip

Tip: Demolition or removal of structures may constitute a development. When the act of demolition alters the exterior of a structure, involves filling, dredging, drilling, excavation, placing of obstructions, etc. (greater than $2500 in value) or materially interferes with public use of the shorelines. In special cases where a structure is moved or dismantled, e.g. unbolted without causing any of the actions listed as "development", a substantial development permit may not be required.

Special Tip

Tip: Local governments should monitor activity on the shoreline and must make decisions about the consistency of development actions with the SMA and the local SMP whether a permit is required or not. Citizen groups such as fishing clubs, bird watching organizations, beach and stream organizations, neighborhood groups, etc. are excellent shoreline "watch dog" entities to work with to efficiently provide "in the field" monitoring.



Exemptions

Under the Shoreline Management Act, certain types of "development" are categorically excluded from being considered substantial developments and therefore these activities are referred to as being **exempt** from the substantial development permit requirements. An **exemption** from the substantial development provisions of the SMA means that an activity must still be carried out in compliance with the Act and the local master program; it is exempt only from the substantial development permit review requirements. **Variance and conditional use permit requirements still apply**. The regulations require that exemptions are to be **narrowly construed** which means local administrators should take a conservative approach i.e. read the RCW and WACs carefully and if the all of the activity necessary to carry out the development is not specifically and directly listed in the exemptions, require a permit [WAC 173-14-040(2)].

The following activities are listed as exempt from the requirement for **obtaining substantial development permits** [RCW 90.58.030(3)(3)(i-xi) and WAC 173-14-040]:

- Normal maintenance or repair of existing structures or developments including damage by accident, fire or elements.
- Normal protective bulkheads common to single-family residences.
- Emergency construction necessary to protect property from damage by the elements.
- Construction and practices normal or necessary to farming, irrigation, and ranching activities including agricultural service roads and utilities on wetlands, and construction and maintenance of irrigation structures... but not including feedlots, processing plants, other commercial type activities nor any significant grading or filling activities.
- Construction or modification of navigational aids such as channel markers or anchor buoys.
- Construction by an owner, lessee, or contract purchaser of a single-family residence for his or her own use or the use of his or her family, provided the residence is located landward of the OHWM, does not exceed a height of 35 feet above average grade, and provided further that it meet all requirements of the state agency or local government having jurisdiction over the area.

- Construction of a pleasure craft dock, including community docks, for private noncommercial use by the owner, lessee, or contract purchaser of a single-family or multiple family residences, the cost of which does not exceed $2,500.

- Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands.

- Marking of property lines and corners on state owned lands, when such marking does not materially interfere with normal public use of the water.

- Operation and maintenance of ditches, dikes, drains, and other facilities existing on September 8, 1975, which were created, developed or utilized primarily as part of an agricultural, drainage or diking system.

Guidance on Interpreting Exemptions

The interpretation of the exemption provisions probably creates more questions than any other single section of the SMA. Many of them have been the subject of discussion in the Courts or of formal interpretations by the Department of Ecology and Attorney General. It is important to note that the burden of proof that a development should be exempted is on the applicant. They should be required to provide documentation of information about the pre-existing conditions, ownership or whatever is necessary to demonstrate the exemption is legitimate. The following section provides guidance on how to apply the exemption provisions.

Normal Maintenance or Repair

Q. What constitutes "normal maintenance and repair"?

A. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition.

Normal repair means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair involves a total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment.

Use your professional judgment, but beware of projects called "maintenance" that actually constitute an expansion in use. Examples include:

- Local road projects (is it repair or expansion with extra lanes, etc.? "capital improvements" usually need permits!).

- Flood control projects should not be considered normal repair and maintenance if they raise the top or enlarge the footprint of a dike beyond where it was originally constructed. Installation or repair of tide gates, flap gates, and any flood control structures should be carefully scrutinized to assure that they simply restore a pre-existing lawful condition.

- Maintenance of agricultural drainage ditches may be exempt but dumping the material dug out of the ditches in a shoreline area is filling and probably requires a permit.

- Dredging to restore pre-existing contours within a designated and authorized navigation channel or basin but if it expands the channel or basin, a permit is required even if the marina or similar project has been operating for years. It is also important to consider how the dredged material is to be disposed of. Picking up the mud may be maintenance but putting it down may be filling requiring a permit. Also dredging is only maintenance where there is a designated and authorized facility such as a federal navigation channel or a berth authorized by permit. The fact that a formerly navigable area has changed such that it is not now navigable is not sufficient.

- Replacing piling and decking on docks is normal maintenance and repair but adding deck area, floats, sheds or other expansion is not.

Emergency Construction

An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate actions within a time too short to allow full compliance. This exemption only applies if the construction is necessary to protect property from damage by the elements.

Q. The local engineering department wants to undertake a flood control project that they've planned and budgeted since last year. They say it's an emergency if they don't get it done right away. It is exempt as an emergency?

A. No. If a project proponent has not obtained a permit due to lack of proper planning, it does not constitute an emergency. A shoreline permit is required in this case. A better example of an emergency is a ruptured oil or sewage line that needs to be repaired or removed immediately or the placement of fill in a washed out area of a dike during a flood event. Use your best professional judgment and the definition of "emergency" that appears in WAC 173-14-040(d).

Agricultural

Q. Aren't all agricultural uses exempt?

A. No. Only those agricultural activities that are specifically listed are exempt. For example, alterations of the land other than normal cultivation activities are not exempt from permit requirements. Diking and filling require permits.

Single Family Residences

"Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. All construction to be located landward of the OHWM.

Q. I've seen a lot of exemptions for single family residences. Would house constructed on "speculation" (a "spec" house) be exempt under the same rule?

A. No. The construction must be by an owner, lessee, or contract purchaser for their own use. This issue has created several court cases and the courts have taken a strict view of the meaning of this provision. See the Ecology v. Pacesetter case [89 Wn.2d 203 (1977)].

Q. An applicant wants to construct a gazebo on a dock extending over the river. He says it is exempt from shoreline permit requirements because it's an appurtenance for a single family residence. Is it?

A. No. Overwater structures are not exempted from substantial development permit requirements by this exemption. See WAC 173-14-040(g): "Construction authorized under this exemption shall be landward of the ordinary high water mark" and appurtenances shall be located landward of marshes, bogs, and swamps.

Q. An applicant needs to fill the lot prior to building his or her residence is this exempt under the SFR exemption.

A. The exemption allows up to 250 cubic yards of grading activity. Grading is the moving of earth that exists on the site and does not include importing of fill.

Normal Protective Bulkheads Common to Single-Family Residences

A "normal protective bulkhead" is constructed at or near the ordinary high water mark to protect a single-family residence and is for protecting land from erosion, not for the purpose of creating land. Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings.

Q. Are all bulkheads exempt?

A. A bulkhead is exempt only if it is a normal protective bulkhead for an existing single family residence. All other bulkheads that meet the definition of "substantial development" require a permit. In addition, SFR bulkheads that support creating dry upland (landfill) or are not located at or near the OHWM, or are in areas that are not subject to erosion require a permit. Finally, bulkheads proposed for undeveloped property where no SFR is being protected are not covered under this exemption and require a permit.

Construction of a Pleasure Craft Dock

Q. Can an applicant build a deck over water under this exemption?

A. No. This exemption refers to docks, that is a place to tie up a boat, not an over water recreation space such as a deck. Decks are a residential appurtenance and must be located landward of the OHWM or the perimeter of a marsh, bog or swamp in order to be exempt.

Construction or Modification of Navigational Aids

Q. Would installation of moorage buoys or dolphins require a permit?

A. Yes. Moorage structures are not considered "navigational aids" and would require a substantial development permit. This exemption covers those lights, markers, buoys etc. usually placed in accordance with Coast Guard standards if not actually placed by the Coast Guard that provide directions and other information necessary for safe navigation.

Marking of Property Lines or Corners on State Owned Lands

This is a very limited exemption applicable only on state owned lands and then only when it does not materially interfere with normal public use of the water.

Q. Are subdivisions and short plats exempt under the exemption for marking of property lines?

A. No. First they are not usually on state owned lands. Further, narrow construction of this provision would mean that even on state owned land, it could apply only to the marking of existing property lines not to the establishment of new property lines which is what subdivisions and short plats do.

Energy Facilities Site Evaluation Council (EFSEC)

Construction under a certificate obtained in conformity with the State Energy Facility Siting Law, Chapter 80.50 RCW is exempt. This applies to major energy related facilities such as nuclear power plants and major pipelines. The Energy Facility Siting Evaluation Council is required to consider other local and state regulations such as the SMA and SMP but no substantial development permit is required.

Special Tip

Tip: Since exemptions to the permit process are to be **narrowly construed,** you would be wise in practice to require permit review for actions whose exemption status is unclear. Some jurisdictions require a shoreline application for all shoreline development. **Once the application is received, the project is reviewed to determine if it may be exempt and under what specific conditions. If it is exempted a written decision is issued with appropriate conditions necessary to assure that the activity is limited to that which is properly exempt and to otherwise assure consistency with the SMP.**

TIPS: What's Exempt? - More questions and answers

Q. Why are exemptions to be narrowly construed?

A. The most basic answer is that it is required by WAC 173-14-040(2). The real answer is because of the liberal construction provision [RCW 90.58.900]. Say What! Listen carefully. Liberal construction means that in interpreting the provisions of the act, one must look to assuring that the interpretation put forward is consistent with the policy of the act to the maximum possible extent. Among the basic policies of the act is the requirement to assure that the public has a say in the approval of shoreline development. Whenever a development is exempted from the permit process, public review is reduced or eliminated. When that is done for any development that is not specifically and directly listed as exempt, the policy of the act has been frustrated and the interpretation of the exemption provisions that allowed the exemption is, thereby, contrary to the liberal construction provision.

Q. If a development is listed as exempt, why is it required to be consistent with the master program and the SMA?

A. The provisions of RCW 90.58.140 require that all "development" be found to be consistent with the master program and the SMA before it is undertaken but then goes on to require that "substantial development" first obtain a permit. Thereby anything that is proposed on the shoreline that is within the definition of "development" must be consistent with the master program and the act. The exemption is only from the requirement to obtain a substantial development permit prior to undertaking the development.

Q. What types of "fill" are exempt from substantial development permit requirements? I've heard applicants argue that "preloading" or surcharge fill is exempt because the fill is subsequently removed. When would such activities really constitute filling and thus require a substantial development permit?

A. Dumping and filling falls within the definition of development, regardless of the time it remains on site. Thus, if it meets the definition of "substantial development," then a permit is required for the preloading or surcharge fill.

Q. Are subdivisions and short plats exempt?

A. Probably not. Although the act of establishing property lines does not usually include activities that are development, the establishing and staking of property lines is in reality a minor, though critical, part of the process of land development. Other aspects of the development such as roads, utilities, and grading are almost certainly substantial development. Furthermore, lot sizes, densities and other characteristics must meet the SMA/SMP policies and standards. If, for example, the SMP says subdivisions in the conservancy environment are a conditional use , a plat applicant would need to obtain a conditional use permit prior to plat approval. If a plat is approved without consideration of SMP requirements such as lot width, setback or resource protection requirements, the plat may be invalidated or contain unbuildable lots which is contrary to state subdivision law. One key to assuring the highest level of consistency is to avoid any piecemealling of development. While the act of subdividing may not be development, it is clearly part of the development process, and it drives all subsequent actions such as the location of roads, houses and other improvements.

Q. My shoreline master program says certain developments are "permitted outright". Does that mean that no permit is required and the project is exempt?

A. No. All substantial developments, regardless of how categorized in the master program, require a permit. When the term "permitted outright" is used it means it is an allowable use or activity, subject to master program policies and regulations.

Q. What about temporary structures or activities?

A. Temporary structures are not specifically exempted from the permit requirements of the SMA. The length of time that a development will be in place is not a consideration in determining if it is substantial development. Also, look at the "material interference" test of RCW 90.58.030(3)(e) i.e. Does the use or activity materially interfere with the normal public use of the water or shoreline? If it does, a permit is required for temporary projects or projects under $2500 in value . For example a six week aquatic weed control project that involved a roped off area and interfered with water-skiing in a particular shoreline area required a substantial development permit.

Special Tip

Tip: Beware of incremental exemptions for activities that in sum would require a permit. Activities such as clearing, grading, and preloading that typically precede development should be included in the SEPA review and shoreline permit review for a development proposal, even if the individual activities are under $2500 or, if conducted as a total project, would be otherwise exempt. The future intended use and associated design of a site should be authorized by shoreline permit prior to any grading, filling, dredging, or other shoreline modification and prior to any subdivision of a site.

Some local master programs require that a **letter of exemption** be issued by the local jurisdiction for all developments that meet the criteria for substantial development exemption under WAC 173-14-040. By state rule, a letter of exemption must be issued for a development that is exempt from a substantial development permit but subject to a U.S. Army Corps of Engineers Section 10 or 404 permit. Such notice, addressed to the applicant and Ecology, states that a development has been exempted from the substantial development permit requirements of the Act, See WAC 173-14-115.

Special Tip

Tip: At your option, the letter of exemption may include conditions on the development. It is important for the applicant and the local administrator to remember that even though an action may be exempt from substantial development permit requirements, the action must still be consistent with the SMA and the local SMP.

Pre-existing Uses

Shoreline developments that predate the SMA or the applicable SMP ("**pre-existing uses**") are regulated by the SMP in several ways. If the use of a development is consistent with the SMP, permits are only required if new substantial development is proposed. Please note that when the use consists of ongoing development activities, such as a gravel mine, the project requires an "active" (unexpired) shoreline substantial development permit throughout the life of the project. If the use of a pre-existing development is proposed to be changed the new use must be consistent with the SMP. If the proposed use is a conditional use in the master program then a conditional use permit is required whether or not new development is required to establish the use.

Nonconforming developments are those uses or structures legally constructed or established prior to the effective date of the applicable SMP provisions that do not conform to present shoreline management rules or policies.

The following provisions are established in state regulations and apply where local government does not have such provisions in its master program. Local government is authorized to adopt different master program provisions pertaining to nonconforming development. See WAC 173-14-055.

Nonconforming development is referred to commonly as being **"grandfathered"** in. This means that it may continue as long as it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity. Nonconforming uses are considered abandoned if they are discontinued for more than twelve consecutive months or for twelve months during any two year period. The "grandfathered" rights expire regardless of the owner's intent to abandon or not.

Any subsequent use must conform to the requirements of the SMA and SMP. Similarly, a nonconforming use may not be changed to another nonconforming use or moved any distance within the shorelines of the state.

If a nonconforming use is damaged to an extent not exceeding 75% replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of damage.

A pre-existing lot or parcel that is substandard with respect to lot size or density requirements may be developed providing it meets the other requirements of the SMA and SMP. A reasonable use of the property should be allowed based on the characteristics of the site. Easing of standards other than lot size or density, for example building setbacks, would require a variance permit.

Example: Typical situations of nonconforming developments are an old boat repair yard or industrial warehouse located in a conservancy environment; or a residence encroaching within established SMP setbacks.

Special Tip

Tip: It is sometimes important to distinguish between a nonconforming structure with a conforming use and a nonconforming use. If a house is located in an environment that allows residential use but is closer to the water than the environment designation allows, it may be expanded as long as the expansion does not further intrude on the setback. (A further intrusion may be authorized by a variance if the criteria can be met.) Expansion of a structure that houses a nonconforming use cannot be authorized by these provisions or by variance.

Determining exactly when a development, such as a bulkhead, was initially built, can be a difficult task. While technically it is the applicant which must prove compliance with the regulation, the practical situation is that usually the local government must look into this to be sure of the situation. Evidence such as assessor's records, recorded deeds or other documents, aerial photos, historical photos, snapshots, other permit records (e.g. building, HPA, short or long plat, etc.) or testimony from contractors, neighbors, officials, etc.) can be crucial in proving the date of construction or initial use.

Conditional Use Permits

Local governments are required under the SMA to include provisions for authorizing uses and developments by **conditional use permits (CUP)**. The purpose of a conditional use permit is to **allow greater flexibility** in varying the application of the **use regulations** of the master program. A conditional use permit should also be granted in a circumstance where denial of the permit would result in a thwarting of the SMA policy in RCW 90.58.020. For instance, an elevated walkway across a portion of marsh providing public access to a public shoreline without interfering with the wildlife, might be authorized by CUP even though the SMP provisions discourage any type of over-water construction. However, **a conditional use permit may not be used to authorize a use that is specifically prohibited by the local SMP**.

Cumulative Impact of Similar Actions: For all CUP applications, consideration must be given under the CUP review process to the cumulative impact over time of granting additional permits for like actions in the area. In other words, if comparable development proposals are likely and were permitted by CUP in the area where similar circumstances exist, **the total of the developments must also be consistent with the SMA and must not produce substantial adverse effects** to the shoreline environment.

For example, a CUP for a bulkhead and landfill for one site may not have substantial adverse effects by itself. However, a series of bulkheads and landfilling strung around a bay could be devastating to the shore environment. The initial CUP request could be denied based on future cumulative impact. One of the greatest strengths of the CUP process is the ability to deal with cumulative impact, encouraging foresight and planning.

Conditional uses that are **classified or set forth** in the local master program may be authorized provided that the applicant can demonstrate all of the following (See WAC 173-14-140):

- the proposed use **is consistent** with the SMA and the policies of the local master program;
- the proposed use **will not interfere** with the normal public use of public shorelines;
- the proposed use of the site and design of the project **will be compatible** with other permitted uses within the area;
- the proposed use **will cause no unreasonably adverse effects** to the shoreline environment designation in which it is to be located;
- the public interest suffers **no substantial detrimental effect**.

Local government may include additional general or use specific criteria as provisions in its master program but must include consideration of the above criteria for all listed conditional uses.

Examples: Typical conditional uses might include overwater commercial development in an urban environment, bed-and-breakfast inns or restaurants within a rural environment or gravel mining in a conservancy environment.

In some cases, uses may be proposed which are not classified or set forth as conditional uses in the applicable master program. These **unclassified conditional uses** may be authorized provided that the applicant can demonstrate, in addition to the normal criteria for conditional uses set forth in WAC 173-14-140(1), that "**extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program.**" See WAC 173-14-140(2).

Special Tip

Tip: If a proposal involves a use that is specifically listed as prohibited by the local SMP, don't attempt to call it something else so that it fits into the SMP provisions. For example, if your master program prohibits over water residential uses and appurtenances except docks, do not call an overwater deck, a dock.

Special Tip

Tip: Remember that **conditional use permits** must be submitted to **Ecology for its approval**. Ecology must conduct an independent review of the permit for consistency with the SMA and may approve, approve with conditions or deny the proposal. Notification to the applicants of this step in the process is very important.


Special Tip

Tip: Some proposals may require a substantial development permit and a conditional use. Other proposals that are not a "substantial development" might require a conditional use permit. **Make sure it is clear on the permit and in the public notices what combination of permits is being considered.** Failure to specify the permit type(s) is a common reason for permits being returned to local government for proper notice and processing. Permit processes are similar and can be handled together as long as clear and separate decisions are made on each issue.

Variance Permits

The SMA also authorizes deviation from **specific bulk, dimensional, or performance standards** (and strictly limits it to these items) in the master program through the granting of shoreline **variance permits**. Variance permits are only granted where there are **"extraordinary or unique circumstances relating to the property** such that the strict implementation of the master program will impose **unnecessary hardships** on the applicant or thwart the policies of" the SMA; Provided that, "in all instances extraordinary circumstances shall be shown and **the public interest shall suffer no substantial detrimental effect**".

Cumulative Impact of Similar Actions: For all variance applications, consideration shall be given under the variance permit review process to the cumulative impact over time of granting additional permits for like actions in the area. In other words, if comparable developments were granted variances in the area where similar circumstances exist, **the total of the developments must also be consistent with the SMA and must not produce substantial adverse effects** to the shoreline environment.

For example, a variance for the size and length of a dock on a narrow slough for one site may not have a substantial adverse effect by itself but a series of such docks could make navigation on the slough very difficult. The initial variance request then could be denied based on future cumulative impact. See WAC 173-14-150(4).

"THE TEN PILLARS OF VARIANCE"


Special Tip

Tip: The burden of proof is on the applicant. A variance is not an assumed right. It is a special exception from the regulations for which a justifiable need and extraordinary circumstances must be demonstrated. It is intended to assure fair treatment of someone with special property circumstances (not personal circumstances) and not to grant special privilege.

Special Tip

Tip: If a significant number of variances are granted from the same provisions of the master program in similar circumstances it is probably time to consider amendment of the master program.

Upland Development (not in marshes, bogs, swamps or waterward of the OHWM) – may be granted variances if the **applicant demonstrates all of the following**:

1. Strict application of the standards **precludes or significantly interferes with a reasonable allowable use** of the property.

2. That an **unnecessary hardship** would result from "strict application of the standards" is a result of **unique conditions** specifically related to the physical characteristics of the property (size, shape, topography) and not a result of such things as deed restrictions or the applicants own action.

3. The project design is **compatible with neighboring uses**.

4. The project will not cause **adverse effects** to the shoreline environment.

5. The variance **doesn't constitute a special privilege** not enjoyed by other properties in the vicinity.

6. The action is the **minimum necessary** to afford relief from the identified hardship.

7. **No substantial detrimental effect** occurs to the public interest.

8. The request **is not to vary a use** of the shoreline, only from a specific standard.

Waterward Development (development in marshes, bogs, swamps or waterward of the OHWM) – may be granted variances if **in addition** to meeting criteria 2-8 above, the following are met:

9. Strict application of the standards **precludes a reasonable allowable use** of the property.

10. The **public rights of navigation and use of the shoreline will not be adversely affected.**


Special Tip

Tip: Items 1 and 9 say "allowable" use which a is a translation of the phrase "not otherwise prohibited" that is used in the WAC, so uses that are prohibited directly or by the operation of other provisions of the master program cannot be granted a variance. Also, note that the criteria in item 9 is **stricter for over-water uses and item 10 includes special consideration of the effect the variance will have on the public use of the water and shoreline.**


Special Tip

Tip: The shoreline jurisdiction area is not a setback requirement from which a variance can be issued. If a use is prohibited within a shoreline environment designation but allowed by the applicable zoning regulations, a variance cannot be used to reduce the 200 foot setback necessary to place the use where it is outside of SMA jurisdiction.


Special Tip

Tip: The "unnecessary hardship" of criteria 2 recognizes all regulations may cause some degree of hardship and discomfort in their application. Variances should only be granted where the specific facts of the case indicate that the hardship is unnecessary when considering the purposes (policy basis) for which the specific standards were originally adopted.

Economic status or legal factors, deed restrictions, granting of easements, lack of planning or building mistakes, or other actions by the applicant or their predecessors which create the need for a variance are **not** valid justifications for granting variances. Irregular lot shapes, size, natural features or unique conditions not caused by the applicant are typical problems specifically related to the property that might provide the basis for granting a variance.

Examples: The most common variances are for residential setbacks (e.g. for a house, deck, or stairs to be located closer to the water than normally allowed). The types of circumstances that typically justify granting the variance include: that the lot was legally created prior adoption of the SMP; or a common setback line was established prior to adoption of the SMP; or the slope of the lot requires placing the building closer to have the least overall shoreline impact.

Special Tip

Tip: Remember that **variances** must be submitted to **Ecology for its approval**. Ecology must conduct an independent review of the variance for consistency with the SMA and may approve, approve with conditions or deny the proposal. Notification to the applicants of this step in the process is very important.

Special Tip

Tip: Some proposals may require a substantial development permit and a conditional use or variance. Other proposals that are not a "substantial development" might require a conditional use permit or variance. **Make sure it is clear on the permit and in the public notices what combination of permits is being considered.** Failure to specify the permit type(s) is a common reason for permits being returned to local government for proper notice and processing. Permit processes are similar and can be handled together as long as clear and separate decisions are made on each issue.

Public Notice Requirements

The SMA gives local government discretion to structure its permit process around a set of minimum requirements established in the act and in state regulations (RCW 90.58.140 and WAC 173-14). Local administrators should generally follow the procedures for permit processing described in the local master program or permit ordinance. However, should there be a conflict between the provisions of the master program or permit ordinance and the provisions of the Act or regulations, the provisions of the Act and state regulations must be followed as a minimum. A requirement of the master program that requires more than the minimum process specified in the SMA is not in conflict with it as long as the minimum provisions are incorporated.

The minimum requirements are that once an application has been submitted and accepted as complete, local government must solicit **public comment** on the proposal. At a **minimum**, local government shall insure **that notices** of the application are published in a local newspaper of general circulation within the area which the project is proposed on the same day of the week for **two consecutive weeks**. An **affidavit** that notice has been properly published must be affixed to the application. In addition, local government **must provide additional public notice** such as mailing information to adjacent property owners and community groups, posting of conspicuous notices on the property, or other appropriate methods. See WAC 173-14-070. Interested parties and members of the public must be allowed 30 days from the second newspaper publication date to submit comments to the local jurisdiction. No decision should be made on the permit until after the expiration of the 30 day public comment period.


Special Tip

Tip: The importance of **following correct procedures** in processing of permits cannot be overemphasized. Failure to follow the processes outlined in the SMA, state shoreline regulations and the local master program may result in the invalidation of a decision. Local planning and zoning requirements for public notice may differ from the SMA. If you are trying to combine these processes, you must **be sure that you meet the SMA's requirements or the shoreline permit process could be invalidated.** Far more appeals and court decisions are decided on procedural grounds than on substantive issues.

Hearings

The act does not require that public hearings be held on shoreline development proposals but many master programs establish hearing requirements. Hearings can be used to assure that interested citizens are appraised of the development proposal and will have an opportunity to comment on it.

Review Process


Special Tip

Tip: In undertaking review of a development keep in mind the following sequence:

1. Review the public notice and permit processing requirements of your SMP. What are the public notice and hearing requirements for the particular type of shoreline permit, i.e. variance, CUP, SDP?
2. Is a variance or conditional use permit required? Why are these permits needed and what are the SMP sections (policies and regulations) affected? Are all of the variance/CUP criteria met?
3. Evaluate how the SMA and SMP policies apply to the proposal. Is the development located in a Shoreline of State-wide Significance? If so, are the SSWS priorities satisfied?
4. Evaluate how the general regulations of the SMP apply to the proposal.
5. Establish which shoreline environment designation(s) apply and evaluate how the SMP use regulations apply to the proposal.
6. Has SEPA been complied with and documented?
7. What other permits are required. Talk to the agencies with permit authority and find out what action has been taken.

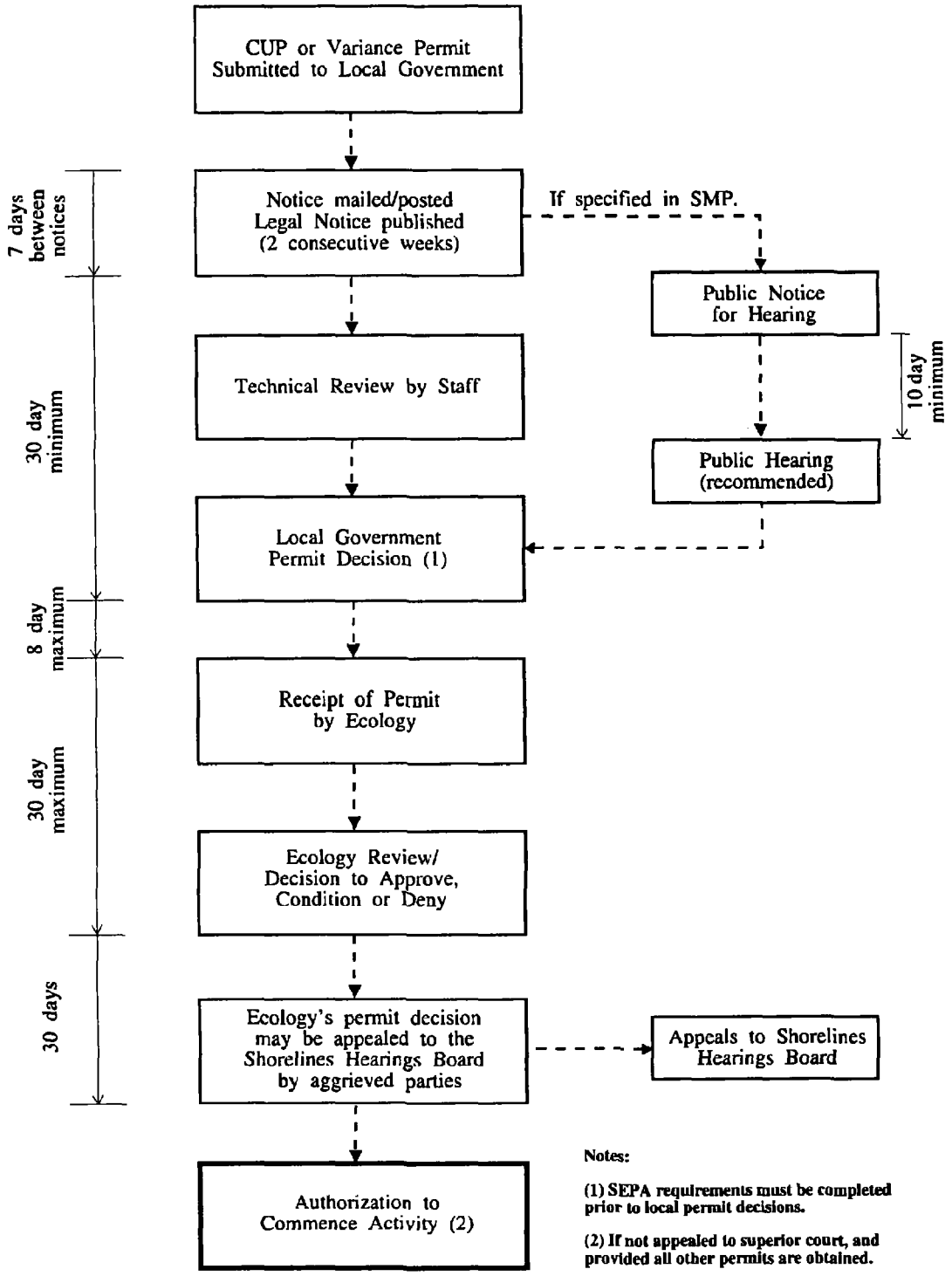
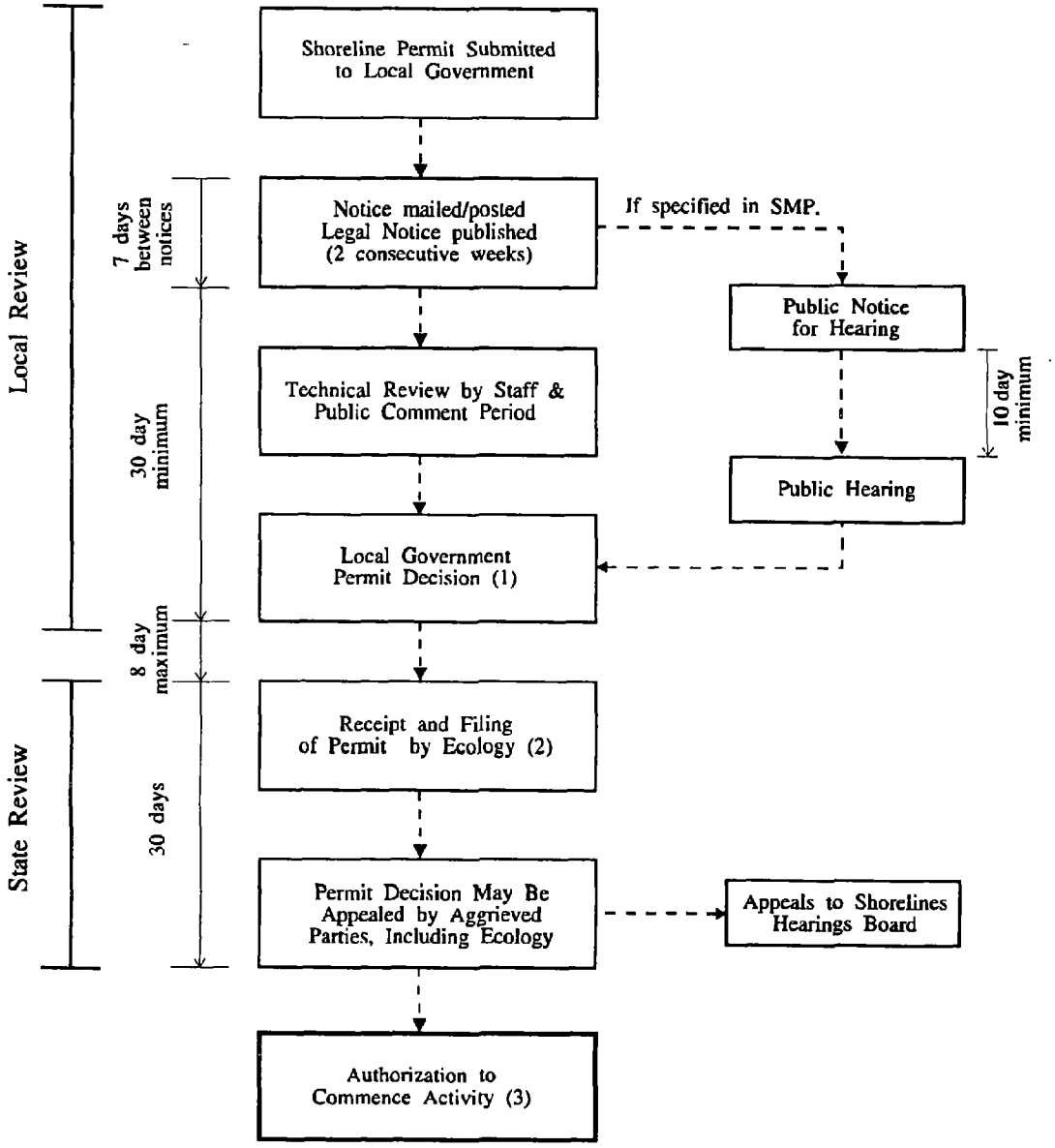


Figure 4-1. Conditional Use Permit (CUP) or Variance Review Process



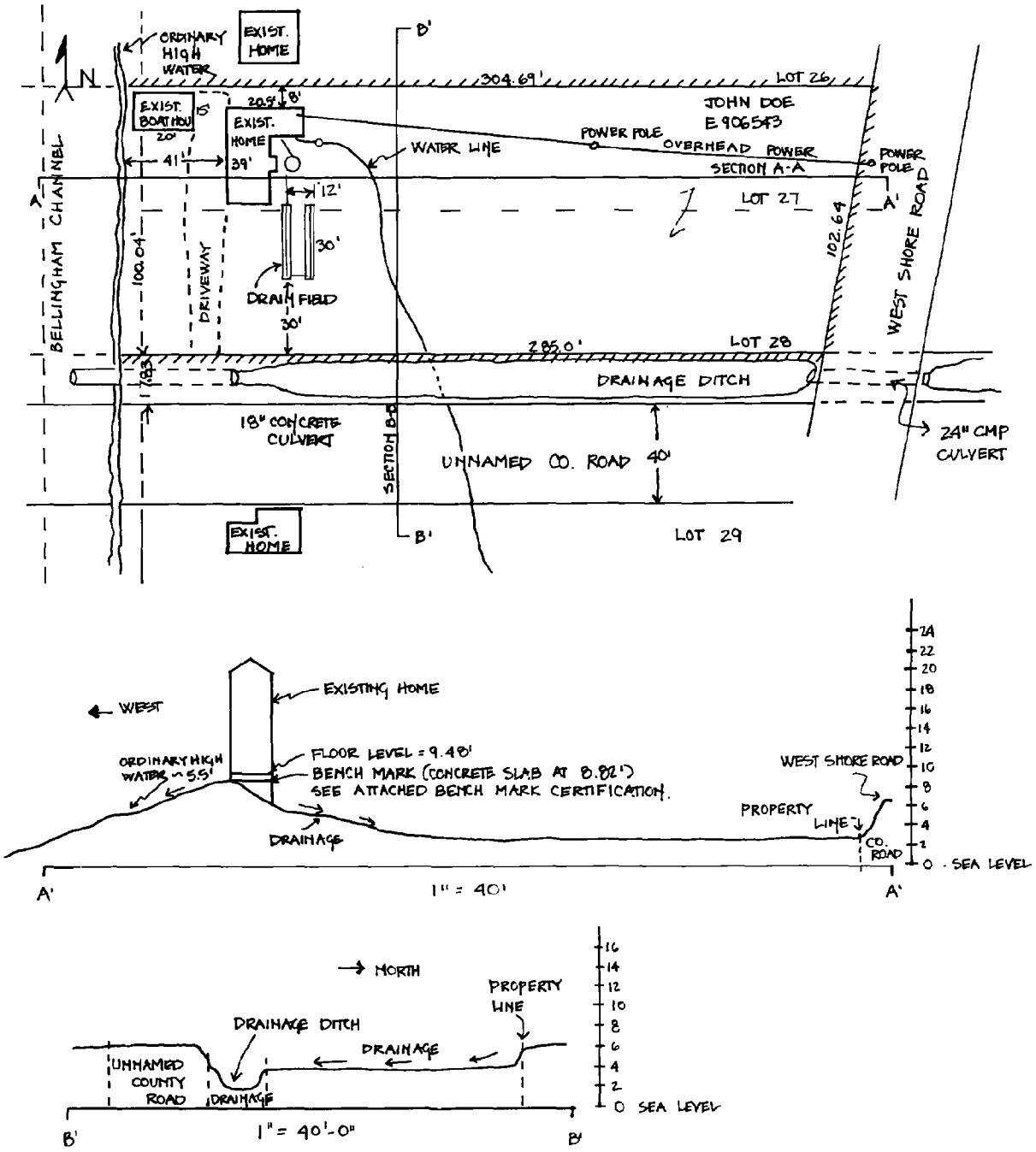
Notes:

(1) SEPA requirements must be completed prior to local permit decisions.

(2) Ecology is not authorized to modify local decisions on SDPs, although it may appeal them. Ecology is required to APPROVE, DENY or CONDITION CUP and Variance Permits.

(3) If not appealed to superior court, and provided all other permits are obtained.

Figure 4-2. Shoreline Substantial Development Permit Review Process



EXISTING CROSS SECTION
LOTS 27 & 28 OF DOGWOOD VISTA
OF GUEMES ISLAND.
JOHN DOE
650 WATERVIEW ROAD
GUEMES ISLAND.

Figure 4-3. Example of a Site Plan Showing Existing Conditions

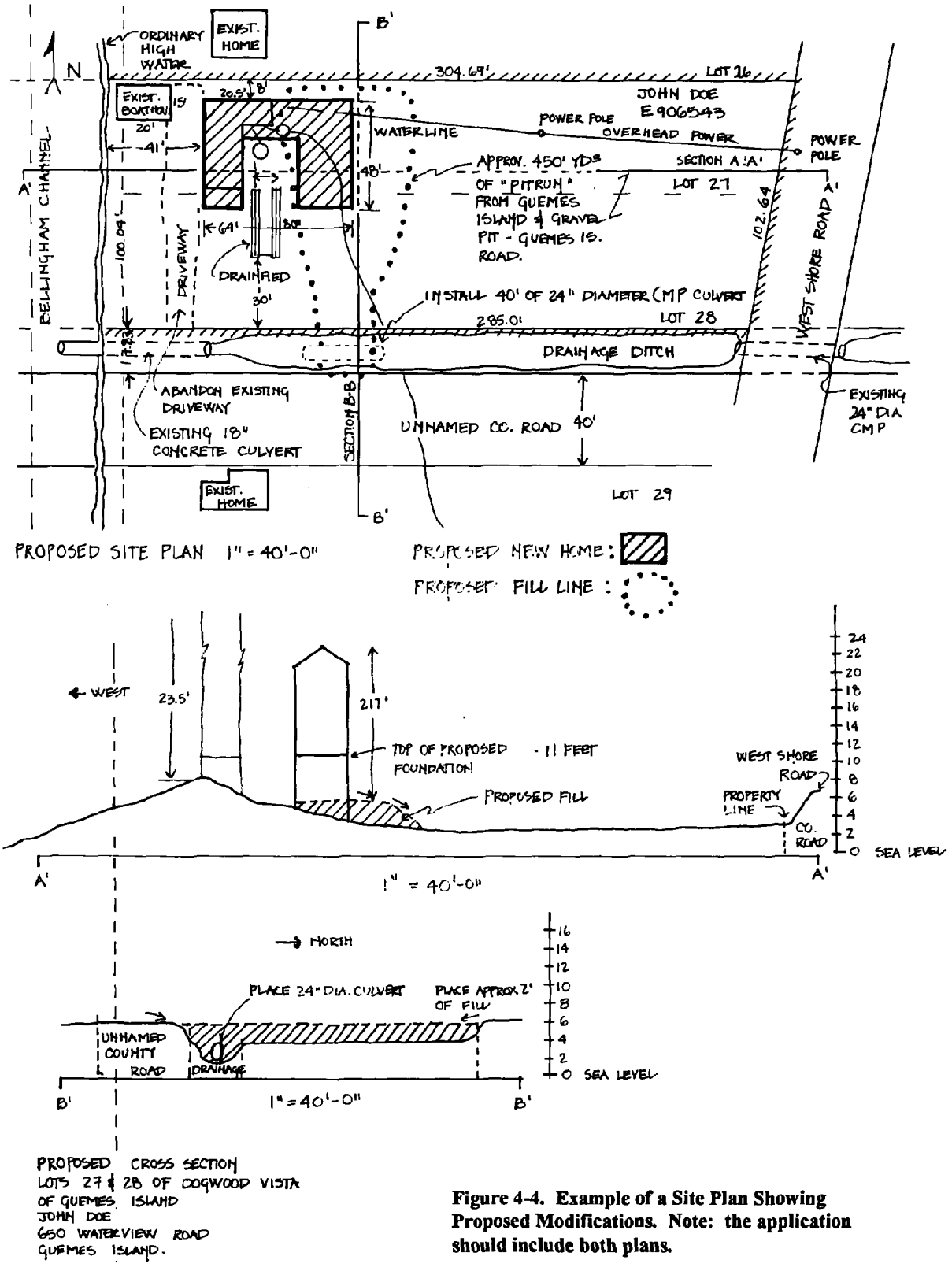


Figure 4-4. Example of a Site Plan Showing Proposed Modifications. Note: the application should include both plans.

As indicated in Figure 4-2, local government must **wait a minimum of thirty days after completion of public notice requirements before taking action. Following public notice and review, the local government may take action on the application.** This is a statutory requirement and thereby no one has the authority to waive it. Any action taken prior to the expiration of the comment period may be voided by the failure to comply with this requirement.

Many permits are issued with conditions attached. Shoreline permit approvals must include any conditions that are needed to ensure that the project is consistent with the SMA and the shoreline master program. Local jurisdictions often apply conditions under powers granted by SEPA in order to mitigate the environmental impacts of a proposal. See WAC 197-11-660. Conditions that are necessary to mitigate impacts to shoreline resources are authorized by the SMA directly [RCW 90.58.020].

When permit approval is based on conditions, **the conditions must be satisfied prior to occupancy or use of a structure or prior to commencement of a non-structural activity**, unless an alternative compliance schedule is a condition of approval [WAC 173-14-060 (5)].

Special Tip

Tip: Conditions imposed on shoreline permits run with the property even if ownership changes, i.e. conditions must be complied with even after the permit expires for the life of the development or beyond if the circumstances warrant such an interpretation. Ecology recommends that certain conditions be **recorded on the title**, particularly those that commit a property owner to maintain habitat or public access. Recording conditions such as vegetation buffers, habitat mitigation areas (including submerged sites), public access points, trails, or parks, and flood control measures **will alert future property owners** of the commitment for maintenance of such areas in perpetuity.

Special Tip

Tip: As a general practice you want to avoid incorporating non-shoreline related permits or conditions into shoreline permit conditions. Keep the issues separate. Appeals and processing may then be easier to deal with and resolve.

Special Tip

Tip: Typical conditions issued under a shoreline permit might include landscaping, screening and berms, hooded lighting, limited operating hours, provisions for public access, monitoring of water quality or other environmental parameters, or modifications of proposed structures to limit obstruction of shoreline views. Under WAC 197-11-660 (SEPA), conditions or mitigating measures must be **"reasonable and capable of being accomplished."** The Shoreline Hearings Board has determined that the test for **"reasonableness"** of the conditions imposed by a local government for a permit is whether the conditions further the policy of the SMA or aid the implementation of the master program. See SHB Case No. 81-37.

Special Tip

Tip: Remember not to confuse "conditions" on a permit with "conditional use permits"! The adding of conditions to a substantial development permit does not make it a conditional use permit. **All permits may be conditioned.**

After a final shoreline permit decision is made and all local appeals or appeal periods have been exhausted, the **local government must notify the applicant and transmit the final action, whether it be an approved permit, denial or revision to the Department of Ecology, and the Attorney General's office within eight days.** In addition, interested citizens (parties) who have requested notification must also be informed of the decision in a timely manner [RCW 90.58.140(4) and WAC 173-14-070]. Permit decisions should not be filed with the State until all local appeals and or appeal periods have been resolved or exhausted. The **date of filing** is the date these documents are received by Ecology. **Construction is not authorized until 30 days after the "date of filing" or until all review proceedings (upon appeal) are terminated See RCW 90.58.140(5)** and **WAC 173-14-090. This 30 day period is also established by the Act and cannot be waived or altered by local government or the state under any circumstances.**

Special Tip

Tip: To ensure that the project is not delayed, send the following to Ecology:

- completed application including text;
- site development plans;
- vicinity map;
- affidavit of public notice;
- permit and **final** order (decision) issued by the local government; and
- applicable SEPA documents including dates and actions.

Ecology's timely review will also be aided by:

- staff reports;
- hearing records;
- written public comments; and
- a list of the names and addresses of interested parties.

Requirements for **processing conditional use permits and variances** are similar to those for substantial development permits. Applications for proposals that require a substantial development permit and a conditional use permit or variance can be handled together as long as clear and separate decisions are made on each issue. Be aware, however, that public notices must indicate if a variance or CUP is being proposed and be sure to check your master program for the proper procedure for variances and CUPs. The requirement for a public hearing may be invoked due to the variance or CUP.

In contrast to substantial development permits, **Ecology must specifically approve or disapprove conditional use and variance permits**. Ecology's regulations allow up to 30 days from the date of receipt of a complete submittal for review and a decision on these permits. Parties wishing to appeal either the local government's or Ecology's decision must do so within 30 days of the date that Ecology's decision is transmitted to the applicant and the local jurisdiction. The date of the Ecology's decision is the "date of filing" on the permit.

When a variance or CUP is denied by the local government it must be filed with Ecology like an approved or conditionally approved permit but the "date of filing" is the date of receipt of a complete submittal by Ecology.

If a project requires a substantial development permit as well as a variance or CUP, the date of filing for the entire package is established according to the rules for variances and CUPs.

Once the local jurisdiction receives Ecology's decision on the permit, it is required to notify all persons who have requested notice of the final decision on the permit [RCW 90.58.(4) and WAC 173-14-070].

Tip: Informing applicants for variances and/or conditional use permit that these require Ecology review and approval and that it may take up to 30 days longer than a substantial development permit is both common courtesy and good practice from a legal standpoint. Note also that Ecology may add conditions to these permits.

Revisions

When an applicant seeks to revise a permit, detailed plans and text shall be provided to the local government. **Permits may be revised** after issuance, if the local government determines that the changes are "**within the scope and intent of the original permit**" [WAC 173-14-064(1)(1)]. Since a project approval and permit authorizes the finished development indefinitely, an application for permit revision may be considered at anytime, **even after the five (or six) year permit expiration time, PROVIDED** that the revision procedure may not be used to extend the original time limit for completing the project, but rather as a means to make modifications to the already completed project [WAC 173-14-060(6)]. This means that if the work necessary to accomplish the revision constitutes "substantial development" then either the original SDP must not have expired or a new SDP is required. There is no limit on the number of revisions allowed for a project, however, the **sum of all of the revisions** must remain **"within the scope and intent of the original permit"** [WAC 173-14-064(3)].

The shoreline regulations [WAC 173-14-064(2)] set forth specific criteria for determining whether a revision is within the "scope and intent" of the original application. To be considered for approval, a revision application must meet **all** of the following:

- **No additional over water construction** - is involved except that pier, dock, or float construction may be increased by 500 square feet or 10 percent, whichever is less, from the provisions of the original permit;

- **Structure footprint and height** - ground area coverage and height of each structure may be increased a **maximum of 10 percent** from the provisions of the original permit;

- **Additional separate structures** - may not exceed a **total of 250 square feet**;

- **No new variances or conditional uses** - the revised permit does **not** authorize development to exceed height, lot coverage, setback, or any other requirements of the master program except as originally authorized;

- **Additional landscaping** - is consistent with conditions (if any) attached to the original permit and with the master program;

- **Same use** - the use authorized pursuant to the original permit is not changed; and

- **No substantial adverse environmental impact** - will be caused by the project revision. WAC 173-14-064 (2).

Special Tip

Tip: The Shorelines Hearings Board has tended to view the specific terms of the revision WAC as guidance only. Where the proposed revision was clearly within the "Scope and Intent" of the original permit and resulted in a better, more environmentally sensitive development, the Board upheld revisions that exceeded specific provisions of the WAC.

Process

Within eight days of the final local government action, the revision including the revised site plan, text, and the final ruling on consistency with WAC 173-14-064 shall be filed with Ecology and the Attorney General. Unless appealed within 30 days of receipt by Ecology, the decision by local government shall automatically stand.

If the original permit involved a **variance or conditional use which was conditioned by Ecology,** the revision must be submitted to Ecology and **so identified**, for approval, approval with conditions, or denial. Ecology shall render and transmit to local government and the applicant its final decision within fifteen days of receiving the application.

Effective Date and Appeals

The revised permit is **effective immediately** upon final action by local government or, when an Ecology conditioned variance or conditional use is involved, upon final action by Ecology.

Appeals shall be based only upon questions of noncompliance with what constitutes "within the scope and intent" of the original permit [WAC 173-14-064(2)] and not the merits of the original permit itself.

Construction undertaken based on the revision and not authorized in the original permit is at the applicant's own risk until the expiration of the appeals deadline and until all appeals have been decided. If an appeal proves the revision was not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

Appeals must be filed **within 30 days** of Ecology's receipt of the application or, if an Ecology-conditioned variance or conditional use is involved, within 30 days of the date of transmittal of Ecology's final decision to local government and the applicant

No Public Notice Required

A revised permit does not require new public notice, however, **parties of record in the original decision must be notified by local government of their permit action (or Ecology's decision) within eight days.** If the changes are not within the original scope and intent, then a new permit application must be filed and new public notice proceedings initiated. See WAC 173-14-064.

Special Tip

Tip: The Shoreline Hearings Board has determined that, as used in WAC 173-14-064, the "intent" of a permit relates to the type of land use authorized, while the "scope" of the permit relates to the actual substantial development(s) which may be constructed. See SHB Case No. 216. The **"scope"** of the original permit is defined as the development described in sufficient detail in the permit itself, in accompanying documents, or on the accompanying site plans. See SHB Case No. 214. This is yet another reason to require clear, detailed plans and drawings!

Timing and Duration of Permits

Start-up Period

Construction or other actions approved under a shoreline permit **must begin within two years** of the date the permit was issued by the local government. The applicant must demonstrate **"substantial progress toward completion"** within this time period. "Substantial progress" shall include **all** of the following, where applicable:

- Making of **contracts**;
- Signing of **notice to proceed**;

- **Completion of grading and excavation**; and
- Laying of **major utilities**.

Where no construction is involved, substantial progress is considered to be the initiation of the activity.

Before the end of the two years, the local government may grant **a single extension of up to one year** to this time limit, based on "reasonable factors". Ecology and interested parties of record **must first be notified**. See WAC 173-14-060.

Completion Period

Shoreline permits are **valid for five years**, i.e. the **construction or any "development" activity must be complete during that period**. Local government may issue permits that expire in less than five years as an option. Again, **before the five years ends**, local government may grant **a single extension of up to one year** based on reasonable factors. Ecology and interested parties of record **must be notified**.

Special Tip

Tip: Some projects require authorization from multiple agencies. This can result in substantial time passing between authorization of a shoreline permit and final authorization to proceed with a project. The regulations directly provide suspension of the running of commencement or completion time periods for delays due to "reasonably related administrative appeals or litigation". As a general matter this should be read to include administrative processes that are outside of the applicants control where the applicant can demonstrate that the project has been actively pursued.

Conditions "run with the land" and are in effect even after the project has been built and the five year permit authorization has expired. New owners of a project must comply with the conditions, public access for example, because the project, not the owners, has been approved based on the conditions.

Special Tip

Tip: Projects involving ongoing "development" activities such as mining, are required to obtain a new permit every five years if the project has a total life in excess of six years (five years with a one year extension).

Rescission of Permits

If a local government finds that a permittee has not complied with the conditions of a permit, **the permit may be rescinded after a hearing with proper public notice to the permittee and the public**. Ecology can also independently petition the Shoreline Hearings Board to rescind a permit that the department believes is in noncompliance. Ecology must first provide written notice to the local government that the noncompliance exists and wait thirty days for the local government to have the opportunity to rescind the permit to rescind the permit. Within fifteen days after the end of the thirty day period and upon written notice to the permittee and local government, Ecology may petition the SHB to rescind the permit. See RCW 90.58.140(8).

Please also note that violation of the terms of a permit is also subject to civil penalties and orders from the local government and/or Ecology.

Appeals

Local shoreline master programs may contain provisions for a **local appeal process**. The local appeal process may handle appeals of the permit action (granting, denial, rescission) and appeals of interpretations of SMP rules and policies. **Local appeals must be exhausted before a permit can be accepted for filing by Ecology** and before turning to the state appeals process.

Persons or organizations may appeal the granting, denial, or rescinding of a shoreline permit by filing a **request for review by the Shorelines Hearings Board**. The request for review should contain the following (See Appendix 7):

1. A statement of valid reasons why the final order of the permit is in violation of the SMA and the shoreline master program policies and regulations, and where appropriate, SEPA;

2. Sufficient factual allegations regarding the proposed project to allow adequate analysis of whether or not there are valid reasons for review;

3. The name and address of the party requesting review and the name and address of the party's representative, if any;

4. The legal residence, or principal place of business within the state, of the party requesting review;

5. A specific description of what the appellant wants the Board to do to remedy the situation;

6. A copy of the order or decision for which the review is requested;

7. The date that the party requesting the review received the order;

8. A statement that the party requesting review has read the request for review and believes the contents to be true, followed by the party's signature and the signature of the party's representative, if any.

The **request for review must be filed within thirty days of the date of filing** of the permit decision with the Department of Ecology. In the case of a variance or conditional use permit, the "date of filing" is the date Ecology's final order on the permit is transmitted to the applicant and local government. If an appeal is filed within this period, Ecology notifies the local jurisdiction issuing the permit and the applicant, and determines whether to certify the appeal to the Shorelines Hearings Board. Ecology and/or the Attorney General have thirty days after a request for review is filed to certify it as valid.

All **certified requests for review will be heard by the Shorelines Hearings Board**. Ecology and the Attorney General also have the right to appeal local permit decisions to the Board at their discretion; all such appeals are also heard by the Board. Ecology and the Attorney General may also intervene in any SHB case to represent the interests of the state and protect the integrity of the SMA. Local government only may appeal any shoreline master program amendment decisions made by Ecology within thirty days of adoption or final action on such rules. Interested parties must appeal such amendment decisions directly to the court system. See RCW 90.58.180.

The SMA created the **Shorelines Hearings Board** as a "quasi-judicial body" to hear appeals by aggrieved parties on permits, and to hear local government appeals of Ecology decisions on SMPs. The Shorelines Hearings Board is composed of six members: three members of the state pollution control hearings board; one member appointed as a representative of the Association of Washington Cities; one member representing the Washington State Association of Counties; and a representative of the Commissioner of Public Lands.

Remanding of Permits

The SHB may remand a permit that it has reviewed. This occurs generally under one of two possible circumstances, a remand for reconsideration or a remand for reissuance.

A remand for reconsideration is unusual for the SHB because of its "De Novo" process of permit review. However, in some circumstances the Board will determine that the local process was flawed in such a way that the best solution is for the local process to be repeated and a new decision made by local government.

More commonly, the Board will determine that changes in the project or the terms and conditions of the original permit are necessary in order to conform to the SMA and local SMP. In such circumstances **the Board will usually remand the permit to local government** with instructions to issue a new shoreline permit consistent with the order. See RCW 90.58.180. Because little guidance is provided in the SMA and its implementing regulations to local governments on procedures to follow in the event a permit is remanded for reissuance, the Board clarified procedures in SHB No. 85-39, *SAVE v. City of Bothell and the Department of Ecology*.

SAVE v. Bothell established the following procedures for remanded permits:

1. All permits remanded by the SHB to local government for further action must be re-issued. **Public notice and comment periods are not required** where the re-issued permit complies with the Board's final order.

2. The **re-issued permit must be filed with Ecology and mailed to parties of record**. The filed material should include the re-issued permit (noted as such) and any documents or plans required as a result of the board's final order or referenced in the re-issued permit.

3. The **time limit for appealing** a re-issued permit is thirty days from the date the permit is filed with the department.

   Subsequent appeals of the recommended permit are **limited** to whether it complies with the SHB decision. Original issues of the case cannot be re-opened.

Special Tip

Tip: You can sometimes avoid appeals by assuring that every detail of the permit process and review is correct. Failure to do so is the reason that many permits are remanded to local government for reconsideration. Even if you can not avoid the appeal, a decision made as a result of a careful process is more likely to be upheld.

Enforcement

As with the permit system, Local governments have primary responsibility for enforcement of the Act and the Master Program under RCW 90.58.050 and WAC 173-17-030 but unlike the permit system Ecology may act alone on enforcement matters if necessary. Local governments can adopt separate rules to implement the Act's enforcement provisions or can use the provisions of the state regulations. Ecology and local governments may use **regulatory orders** to enforce the SMA. See RCW 90.58.220 and WAC 173-40-180. ***Joint enforcement*** orders may also be issued by local government and the Department of Ecology. The regulatory order must contain:

- A description of the specific nature, location, extent, and time of violation and the damage or potential damage;
- Notice that the violation cease and desist, or in appropriate cases, the specific corrective action be taken within a given time;
- Effective date of the order;
- Notice that the failure to cease and desist shall result in enforcement actions; and
- Notice that the violator is entitled to a hearing before the Shorelines Hearings Board. See RCW 90.58.180.

The regulatory order may notify the violator to: 1) stop the project; 2) obtain a shoreline permit; 3) pay a penalty; 4) mitigate the impact of the project; 5) remove the project; or, 6) rescind the existing shoreline permit.

Special Tip

Tip: The SMA's enforcement policy states that the choice of enforcement action and the severity of the penalty should be based on the nature of the violation, the damage or risk to the public or to public resources, and the existence or degree of bad faith of the persons subject to the enforcement action. See WAC 172-17-030.

Special Tip

Tip: Local governments should be aware that the choice of type of regulatory order results in different judicial procedures in the event of appeal. Enforcement penalties issued **solely by Ecology or jointly by Ecology and the local jurisdiction** are appealable to the Shorelines Hearings Board. Those imposed by the local jurisdiction are appealable to the local governing authority and then to the Superior Court. The benefit of a joint enforcement order is that appeals go straight to the Shorelines Hearings Board. Such appeals proceedings are usually faster, easier, and less expensive, and are argued in a forum devoted exclusively to shorelines issues rather than a formal, rigid, court setting where shoreline issues are rarely considered amongst the multitude of wide-ranging criminal and civil cases.

Violations of the Act are considered gross misdemeanors, punishable by fines or imprisonment. **In addition to criminal penalties, civil penalties may be imposed** against violators for non-compliance with the Act, aiding or abetting a violation (e.g. an agent or contractor), and delinquent permits (applying for permits after commencement of a use or activity). Civil penalties typically include fines, removal of offending structures or material e.g. fill, and restoration of the site.

Liens against the property may be imposed until penalties are paid in full. The Act imposes liability on any person for damages to public or private property arising from a violation of the Act, related regulations, or conditions on a permit. The violator may be required to assume the costs, including attorney's fees and court costs, of restoration of an area affected by a violation. See RCW 90.58.180.

Enforcement of the SMA/SMP may be required in the case of a development valued at less than the two thousand five hundred dollar ($2,500) substantial development threshold (no SD permit required) which is a prohibited use in a particular environment (for example, a $1,500 billboard constructed in a conservancy designation where signs are a prohibited use).

Look It Up!

Look it up! See Chapter 173-17 WAC, Shoreline Management Act Enforcement Regulations. Check the enforcement policies and provisions of your SMP for information on local enforcement procedures.

Special Tip

Tip: Some jurisdictions require double or triple permit fees for "after-the-fact" shoreline permits due to additional legal and administrative costs resulting from difficult evaluations and verifications.

CHAPTER 5

Related Regulatory Programs

The State Environmental Policy Act

The State Environmental Policy Act, or "**SEPA**", establishes a detailed administrative process for assuring that environmental impacts are recognized, evaluated, and where possible, mitigated during agency decision-making. Equally important, the SEPA process provides a major avenue for public comments on a proposed project to be solicited and addressed by the agency with oversight. The SEPA process is intended to mesh with other permits, approvals, and/or licenses. Compliance with SEPA must be verified on all Shoreline permits and on other shoreline related activities such as amendment of the Shoreline Master Program. The complete SEPA process is provided by the provisions of RCW 43.21C and WAC 197-11.

The SEPA process interacts with the shoreline management process in several ways. Compliance with SEPA is required for issuance of a shoreline permit. Conditioning and denial of a shoreline permit may be done under powers granted by the SEPA guidelines [WAC 197-11-660]. The SEPA checklist must identify all local, state, and/or federal permits or approvals that may be required. An EIS must include a detailed evaluation of the project's consistency with existing plans and policies (e.g. the local SMP) and zoning regulations. For these reasons, it's important to remember that the "umbrella" of SEPA compliance extends over the whole shoreline administration process.

Federal agencies are required to consider the environmental impacts of agency sponsored developments, permits, and grants under processes defined by the National Environmental Policy Act (NEPA). Like SEPA, NEPA requires full disclosure of environmental impacts and their consideration by an agency prior to a decision. Under NEPA, agencies prepare an environmental assessment ("EA"), and use it to determine whether an EIS is required. For projects not requiring an EIS, a finding of no significant impact (FONSI) is issued. NEPA

requires examination of some economic and technical considerations that are excluded from SEPA.


Special Tip

Tip: Categorical exemptions under SEPA are not identical to the substantial development permit exemptions granted under the SMA. Many small projects will be exempt from both SEPA and the SMA's permit requirements, but this is not always true. For example, a residential structure of four dwelling units is usually categorically exempt under SEPA, but clearly is a "substantial development". In such cases, the local government should demonstrate compliance with SEPA by attaching a statement of categorical exemption to the permit submittal package. See WAC 197-11-305 and 197-11-800.


Special Tip

Tip: When a shoreline permit is required, the local jurisdiction will typically be the lead agency for SEPA but not always. The most notable exception is when a project is proposed by a governmental unit (special purpose district, city, county, state agency, etc.). The proposing unit of government is always the lead agency for a governmental project. In other circumstances on privately proposed projects other agencies may assume the lead agency responsibilities. Check SEPA rules for lead agency.


Special Tip

Tip: It is important to track a project's separate compliance with the different review periods and public notice requirements stipulated under SEPA and the SMA. Never issue the shoreline permit until the SEPA review periods are complete (fifteen day review for DNSs; thirty day review for draft EISs). Failure to observe the review periods could lead to remanding of the permit by the Shoreline Hearings Board.


Special Tip

Tip: Require that a site plan and as much detailed information as you can obtain be part of the SEPA checklist. Local administrators can use SEPA as a powerful tool for preliminary assessment of permits. Requesting site plans and detailed information will also help Ecology staff evaluate the proposal in its early stages, and they will be more able to provide useful comments earlier in the process. (SEPA checklists are filed with Ecology, and projects identified as requiring shoreline permits are reviewed by Shorelands Management staff.)


Look It Up!

Look it up! See Chapter 43.21C RCW, the State Environmental Policy Act; and Chapter 197-11 WAC, SEPA rules. Rules on implementation of NEPA are found in the Council on Environmental Quality regulations, 40 CFR 1500-1508.

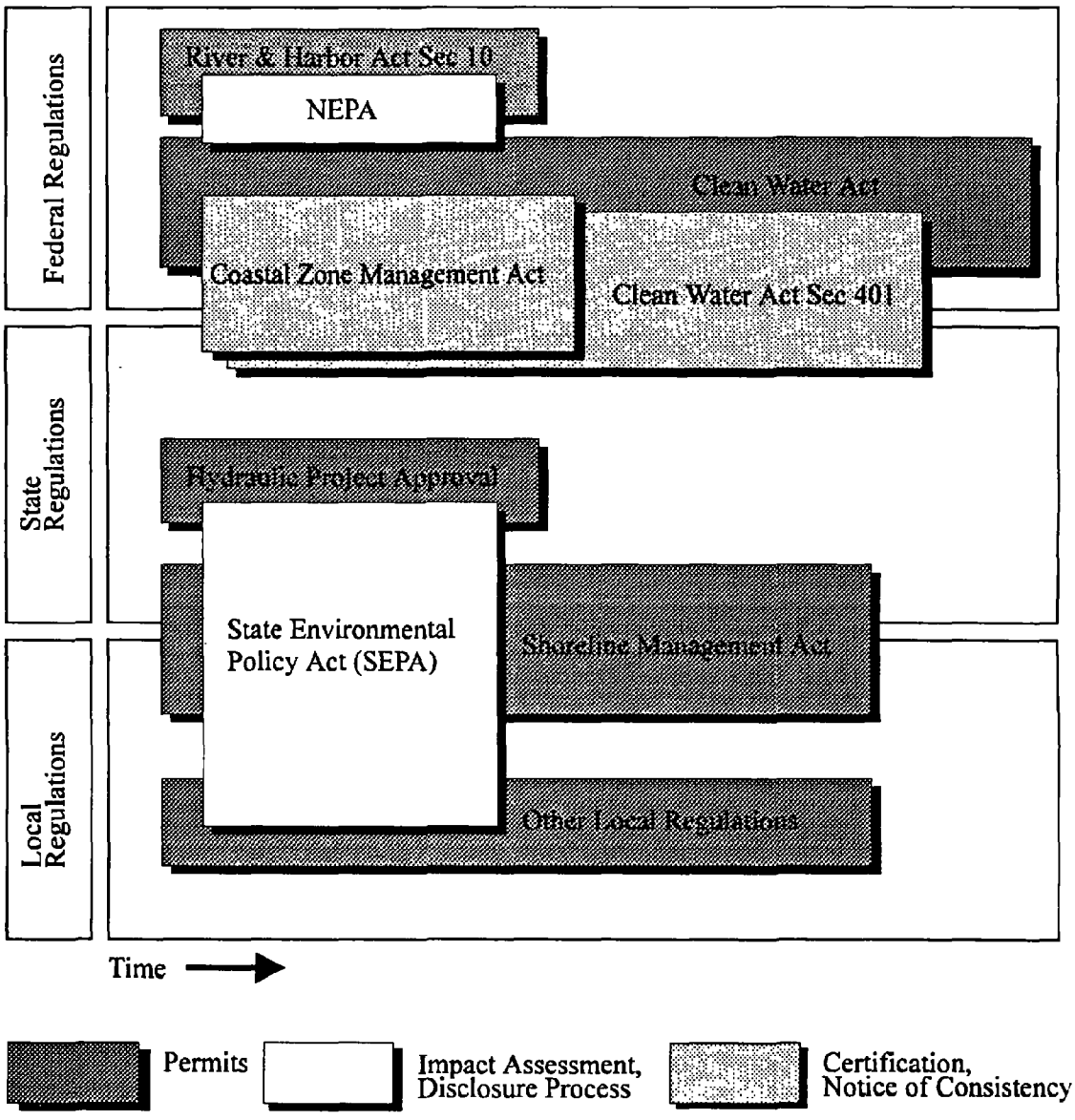


Figure 5-1. Typical Regulation Programs and Permits Required for Shoreline Development

The Section 10/404 Permit Program

The U.S. Army Corps of Engineers regulates **construction in navigable waters** under the authority granted by the Rivers and Harbors Act of 1899 (Section 10), the Federal Water Pollution Control Act of 1972 (Section 404), the Clean Water Act of 1977, and numerous amendments and related water quality legislation. Section 404 specifically regulates **discharge of dredge or fill material into waters of the United States, including wetlands**.

Applications for a 404 permit must demonstrate the need for the project, the potential possibilities for using alternative locations or methods of construction, and the beneficial and/or detrimental effects of the project. For dredging projects in urban areas, chemical and biological testing of sediments is usually required. The application must identify the disposal site for the dredged materials and/or exact areas proposed for filling. The review process provides tribes, federal and state agencies having jurisdiction of water quality, fish and wildlife resources, and submerged lands and other interested parties with the opportunity to review and comment on the application.

Certain actions that are considered to have minimal environmental impacts are covered by national, regional, or state general permits. If the project complies with the conditions of the general permit, an individual project permit is not required. Examples of such projects are: navigation markers, some moorage structures (e.g. dolphins), utility line structures, bank stabilization, certain minor dredge and fill projects, and certain federally approved and funded projects.

As noted in Chapter 1 of this manual, the Federal Coastal Zone Management Act requires that federal permits (including the Section 10/404 program) be consistent with the state's federally approved coastal zone management program (within the CZMP, the project must be consistent with the local SMP). Perhaps oversimplified, this means that the Corps will not issue its permit until after the project has been determined to be in compliance with the SMA by the local jurisdiction and Ecology.

Special Tip

Tip: Remember that projects that are exempt from SMA substantial development permit requirements but still require a Corps permit must have a letter of exemption from the local jurisdiction in order to receive the Corps permit. Also remember that Ecology reviews these exemptions and must concur that the exemption is appropriate prior to granting CZM consistency. See WAC 173-14-115.

Look It Up!

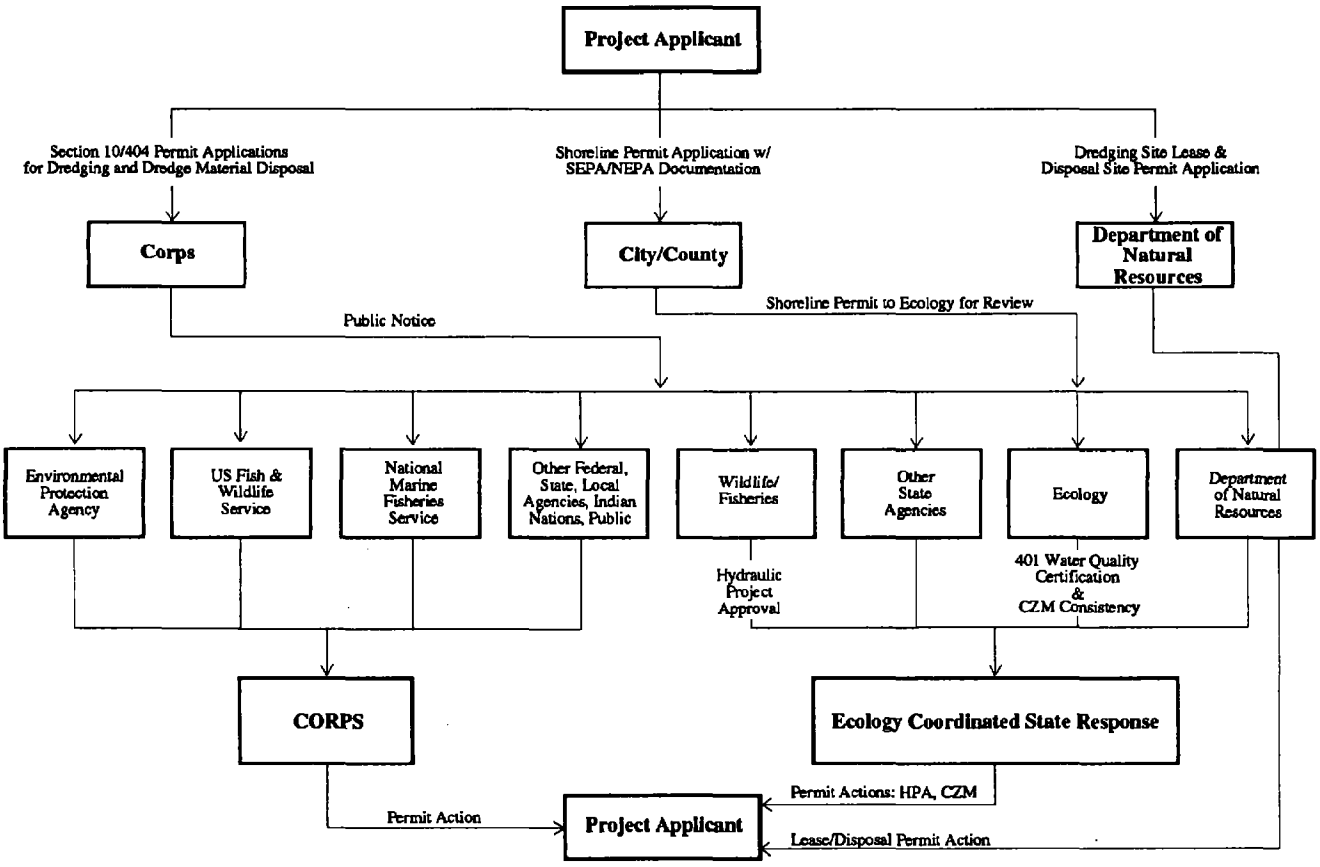
Look it up! See the Federal Clean Water Act Section 404 (b)(1) guidelines, 40 CFR Part 230.

Section 401 Water Quality Certification

Section 401 of the Federal Clean Water Act requires applicants for federal permits **to obtain a certification** from the state (Ecology) for any activity that could result in the **discharge of a pollutant in violation of a state water quality standard**. The state must certify that the materials to be discharged will comply with applicable effluent limitations, water quality standards, and any other applicable standards. Typically the 401 certification is administered along with the Section 10/404 permit review but also applies to other federal permits.

Hydraulic Project Approval

The State Hydraulic Code requires that anyone proposing construction within or over the waters of the state waterward of the OHWM obtain a permit, called a **Hydraulic Project Approval (HPA)**, from the state Department of Fisheries and Wildlife. The intent of the program is to protect fish and fish habitat from damage by construction and other activities in all marine and fresh water areas of the state. An HPA is required for all types of in-water construction, including streambank protection, pile driving, culvert installation, dredging, gravel removal, debris removal, construction of docks, piers, and bulkheads, and channel realignments. Applications for HPAs are filed with the Department of Fisheries and Wildlife.



Revised from: US Army Corps of Engineers, US Environmental Protection Agency, Washington Department of Natural Resources, and Washington Department of Ecology, 1988. Puget Sound Dredged Disposal Analysis: Management Plan Report - Unconfined

Figure 5-2. Revised Version of U.S. Army Corps of Engineers Permit Process

Shoreline project proponents should be aware that fisheries closure periods (periods when no in-water construction may occur due to spawning or outmigration) can apply to their project. Permitting and project scheduling should take these closure periods into account.

Look It Up!

Look it up! See Chapter 75.20.100-140 RCW, the Hydraulic Code; and Chapter 220-110 WAC, the Hydraulic Code Rules.

Forest Practices Act

The Forest Practices Act regulates the broad spectrum of forest management activities, including timber harvesting, reforestation, use of chemicals and fertilizers, and road construction and maintenance. It is administered by the Department of Natural Resources. The Act's implementing regulations establish "Riparian Management Zones" adjacent to streams where additional care is required in the harvesting of trees, and specified trees must be left in order to **protect water quality and fish and wildlife habitat**. Some wetlands adjacent to streams are included in the riparian management zones.

Special Tip

Tip: The **SMA restricts timber harvesting within shorelines of state-wide significance** to allow only selective cutting, so that no more than 30% of the merchantable trees may be harvested in any ten year period. See RCW 90.58.150. The Shorelines Hearings Board has ruled that the purpose of this requirement is to preserve water quality and aesthetic values and that a proponent of an alternative harvest method must demonstrate that the SMA prescribed selective cutting method would be **ecologically detrimental**. See SHB Case No. 77.

Special Tip

Tip: Some activities permitted under the state Forest Practices Act, such as timber cutting, replanting, fertilizing, and thinning are not subject to the substantial development permitting requirements of the SMA. However, these **activities must be in compliance with the provisions of the SMA and local SMP**. In some cases, shoreline conditional use permits or variances may be required. Some master programs list Forest Practices as a conditional use and thereby, a CUP is required regardless of whether the activity is considered "substantial development" or not. Construction of logging roads, landings, storage buildings and other types of forest practices activities that constitute substantial developments are subject to shoreline substantial development permit requirements.

Look It Up!

Look it up! See Chapter 76.09 RCW, the Forest Management Practices Act; and Chapter 222 WAC, Forest Management Rules. A good comprehensive resource for rules related to forest management practices is the booklet Washington Forest Practices Rules and Regulations, published by the Forest Practices Board and available upon request from the Department of Natural Resources.

Flood Plain Management Program

Under Washington's flood plain management program, local floodprone jurisdictions must adopt a **flood hazard prevention ordinance** based upon federal standards contained in the National Flood Insurance Program (NFIP).

Ecology administers the Flood Control Assistance Account Program (FCAAP), which allocates matching funds for repair or restoration of flood control facilities, for projects designed to maintain or improve channel capacity, and for the development of comprehensive flood control management plans.

Local comprehensive flood control management plans must be consistent with the SMA and local SMP. In addition, flood control projects must be consistent with the SMA/SMP. In administering permits for flood control projects, it is important to remember the distinctions between those projects that are exempt because they constitute normal maintenance and repair (see the section on exemptions in this manual) and those projects that will require a permit because they constitute a substantial development e.g. raising of dikes; landfilling; and dredging for channel improvement.

Look It Up!

Look it up! See Chapter 86.16 RCW; Chapter 173-158 WAC.

Model Toxics Control Act

The voters of Washington passed the Model Toxics Control Act (MTCA), Chapter 70.105 RCW, by initiative in the fall of 1988. The Act creates a **state program to clean up hazardous waste sites** which will be funded through a tax on hazardous substances sold within the state. The Act resembles the federal Comprehensive Environmental Response, Compensation, and Liability

Act (CERCLA or "Superfund") in many ways. However, unlike CERCLA (and the previous state law which was superseded by the MTCA) which exempts most types of hazardous waste cleanup actions from other federal, state, and local permitting requirements, the MTCA does not provide this exemption. Hazardous waste cleanup actions under MTCA are required to obtain relevant state and local permits. Cleanup actions within shoreline jurisdiction are required to obtain SMA authorization under the same standards for any other development or activity.

Local administrators may need to seek guidance from Ecology in participating in the implementation of these requirements, and in assuring that SEPA and permitting are effectively coordinated within the MTCA process.

Look It Up!

Look it up! See the Model Toxics Control Act, Chapter 70.105D RCW, and the Hazardous Waste Disposal Act, Chapter 70.105 RCW, and related rules, Chapters 173-303 and 173-340 WAC.

Aquatic Lands Act

The state is the nominal owner of the beds of all navigable waters (ma rine lands below mean lower low water (MLLW) out to the three-mile limit, and lakes and rivers below the line of navigability) and of all tidelands (lands between mean lower low tide and mean higher high tide) that were not previously sold by the state. The Department of Natural Resources (DNR) manages these lands as a public trust. DNR administers aquatic lands under a variety of programs.

In 1984, the state legislature passed The Aquatic Lands Act (RCW 79.90) directing DNR to manage aquatic lands to achieve a balance of public benefits, including public access, environmental protection, renewable resource use, and revenue generation consistent with the purposes of the act. The act also identifies water-dependent uses as priority uses for state aquatic lands. The act states that "in cases of conflict between water-dependent uses, priority shall be given to uses which enhance renewable resources, waterborne commerce, and the navigational and biological capacity of the waters, and to state-wide interests as distinguished from local interests."

WAC 332-30-134 contains DNR's policy of encouraging coordinated, interagency planning to identify and protect aquatic natural resources. At the present time, DNR's Aquatic Lands Program is accomplishing this mandate in a variety of ways. However, of most interest to shoreline administrators, DNR

reviews permits (including shoreline permits) for activities with potential impacts on state-owned aquatic lands, and recommends ways to minimize these impacts.

Appendixes

Shorelands & Coastal Zone Management Program

93-104B

APPENDIX 1

Sample Shoreline Substantial Development Permit Submittal Checklist

SAMPLE SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT SUBMITTAL CHECKLIST

Per WAC 173-14-110: Information required for application of substantial development, conditional use, or variance permit.

Application form
Project diagrams with scale on lower right hand corner
Site plan(s)

____ Site boundary
____ Property dimensions in vicinity of project
____ Ordinary high water mark
____ Typical cross section(s) showing:
  ____ existing ground elevations
  ____ proposed ground elevations
  ____ height of existing structures
  ____ height of proposed structures
____ Proposed land contours, where appropriate at 5' intervals in water and 10' landward of OHWM.
____ Dimensions and locations of existing structures to be maintained.
____ Dimensions and locations of proposed structures
____ Source, composition, and volume of fill material.
____ Composition and volume of extracted materials and proposed disposal area.
____ Location of proposed utilities.
____ Septic tank compliance with local and state regs.
____ Shoreline environment designation according to master program.
____ Areas of shoreline which are of statewide significance.
____ Vicinity map
____ Site location using natural points of reference
____ Soils disposal site, if applicable
____ Improvements and land use within 1000' from site

APPENDIX 2

Sample Permit Application Form

APPLICATION FOR SHORELINE MANAGEMENT SUBSTANTIAL DEVELOPMENT, CONDITIONAL USE, OR VARIANCE PERMIT

TO THE APPLICANT: This is an application for substantial development, conditional use, or variance permit as authorized by the Shoreline Management Act of 1971. It is suggested that you check with appropriate local, state, or federal officials to determine whether your project falls within any other permit systems.

1. Name of Applicant_____

2. Mailing Address_____

3. Relation of applicant to property *(Specify Relationship)*

   ☐Owner ☐Purchaser ☐Lessee ☐Other_____

4. Name and address of owner, if other than applicant_____

   _____

5. General location of proposed project *(Please list section to the nearest quarter section, township, and range)*

   _____

6. Name of water area and/or wetlands within which development is proposed

   _____

7. Current use of the property with existing improvements

   _____

   _____

8. Proposed use of property *(Please Be Specific)*

   _____

   _____

9. (To be completed by local official.) Nature of the existing shoreline. *(Describe type of shoreline, such as marine, stream, lake, lagoon, marsh, bog, swamp, flood plain, floodway, delta; type of beach, such as accretion, erosion, high bank, low bank, or dike; material such as sand, gravel, mud, clay, rock, riprap; and extent of type of bulkheading, if any):*

   _____

   _____

   _____

10. *(To be completed by local official.)* In the event that any of the proposed buildings or structures will exceed a height of thirty-five feet above the average grade level, indicate the approximate location of and number of residential units, existing and potential, that will have an obstructed view.

_____

_____

_____

11. *(To be completed by local official.)* If the application involves a conditional use or variance, set forth in full that portion of the master program which provides that the proposed use may be a conditional use, or, in the case of a variance, from which the variance is being sought.

_____

_____

_____

12. PROJECT DIAGRAMS: Draw all site plans and maps to scale, clearly indicating scale on lower right-hand corner and attach them to the application.
    (a) SITE PLAN. Include on plan:
        (1) Site boundary.
        (2) Property dimensions in vicinity of project.
        (3) Ordinary high-water mark.
        (4) Typical cross-section or cross-sections showing:
            (i) Existing ground elevations.
            (ii) Proposed ground elevation.
            (iii) Height of existing structures.
            (iv) Height of proposed structures.
        (5) Where appropriate, proposed land contours using five-foot intervals in water area and ten-foot intervals on areas landward of ordinary high-water mark, if development involves grading, cutting, filling or other alteration of land contours.
        (6) Show dimensions and locations of existing structures which will be maintained.
        (7) Show dimensions and locations of proposed structures.
        (8) Identify source, composition, and volume of fill material.
        (9) Identify composition and volume of any extracted materials, and identify proposed area.
        (10) Location of proposed utilities, such as sewer, septic tanks and drainfields, water, gas, electricity.
        (11) If the development proposes septic tanks, does proposed development comply with local health and state regulations?
        (12) Shoreline designation according to master program.
        (13) Show which areas are shorelines and which are shorelines of statewide significance.

    (b) VICINITY MAP.
        (1) Indicate site location using natural points of reference (*roads, state highways, prominent land marks, etc.)*
        (2) If the development involves the removal of any soils by dredging or otherwise, please identify the proposed disposal site on the map. If the disposal site is beyond the confines of the vicinity map, provide another vicinity map showing the precise location of the disposal site and its distance to the nearest city or town.
        (3) Give a brief narrative description of the general nature of the improvements and land use within one thousand feet in all directions from development site (*i.e., residential to the north, commercial to the south, etc.)*

APPENDIX 3

Sample Form for Notice of Application for Shoreline Permit

NOTICE OF APPLICATION FOR SHORELINE MANAGEMENT SUBSTANTIAL DEVELOPMENT, CONDITIONAL USE, OR VARIANCE PERMIT
(Indicate type of permit(s) being applied for)

Notice is hereby given that _____
(Name of Applicant)

who is _____
(Describe relationship of property, such as owner, purchaser, lessee, etc.)

of the below described property has filed an application for a substantial development, conditional use, variance *(Indicate type of permit(s) being applied for)* permit for the development of

_____
(Describe development, including uses)

_____

_____

located at _____
(Give street address, if known, otherwise give distance and direction)

within _____ of section _____ of township _____ N.,
(Quarter Section)

Range _____ W.M., in _____
(City or Town) *(County)*

Washington. Said development is proposed to be within _____
(Name of Water Area)

and/or its associated wetlands. Any person desiring to express his views or to be notified of the action taken on this application should notify _____

_____
(Name of Local Government Official)

in writing of his interest within thirty days of the final date of publication of this notice which is _____.
(Date)

Written comments must be received by _____
(Date)

APPENDIX 4

Sample Permit Form

SHORELINE MANAGEMENT ACT OF 1971
PERMIT FOR SHORELINE MANAGEMENT SUBSTANTIAL DEVELOPMENT, CONDITIONAL USE, OR VARIANCE PERMIT

☐Owner
☐Purchaser
☐Lessee
☐Other

Application No_____
Administering Agency_____
Date Received_____
Approved_____Denied_____
Date of Issuance_____
Date of Expiration_____

Pursuant to RCW 90.58, a permit is hereby granted/denied to:

_____
(Name of Applicant)

_____
(Address)

to undertake the following development_____

_____

_____

upon the following property_____
(Section, Township, Range)

_____

Within _____ and/or its associated wetlands.
(Name of Water Area)

The project will _____ within shorelines of statewide significance (RCW 90.03.350)
(be/not be)

The project will be located within a _____designation
(Environment)

The following master program provisions are applicable to this development _____

_____

(State the Master Program Sections or Page Numbers): If a conditional use or variance, also identify the portion of the master program which provides that the proposed use may be a conditional use, or that portion of the master program being varied.

Development pursuant to this permit shall be undertaken pursuant to the following terms and conditions

_____

_____

_____

This permit is granted pursuant to the Shoreline Management Act of 1971 and nothing in this permit shall excuse the applicant from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project, but not inconsistent with the Shoreline Management Act (Chapter 90.58 RCW).

This permit may be recinded pursuant to RCW 90.68.140(8) in the event the permittee fails to comply with the terms of conditions hereof.

CONSTRUCTION PURSUANT TO THIS PERMIT WILL NOT BEGIN OR IS NOT AUTHORIZED UNTIL THIRTY DAYS FROM THE DATE OF FILING AS DEFINED IN RCW 90.58.140(6) AND WAC 173-14-090 OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN THIRTY DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(a)(b)(c).

_____ _____

(Date) *(Signature of Authorized Local Government)*

THIS SECTION FOR DEPARTMENT OF ECOLOGY USE ONLY IN REGARD TO A CONDITIONAL USE OR VARIANCE PERMIT

Date received by the Department_____

Approved_____ Denied_____

This conditional use/variance permit is approved/denied by the Department pursuant to chapter 90.58 RCW.

Development shall be undertaken pursuant to the following additional terms and conditions:

_____

_____

_____

_____ _____

(Date) *(Signature of Authorized Department Official)*

APPENDIX 5

Sample Questionnaire on Related Approvals for Substantial Development Permit Applicants

SAMPLE QUESTIONNAIRE ON RELATED PERMIT/APPROVALS FOR SUBSTANTIAL DEVELOPMENT PERMIT APPLICANTS.

Here is a sample informational questionnaire that applicants could use to determine if other permits or approvals are required

Note to Permit Applicants: Proposals requiring shoreline management permits often require other federal, state and local permits and approvals. Application for or approval of a shoreline substantial development permit does not waive the requirement to obtain any other federal, state or local permit or approval. Use this questionnaire as a general guide to determine if other approvals, permits or evaluations are required for your project. It is your responsibility to see that your proposal is in compliance with all applicable rules and programs.

SEPA:
Is the proposal exempt from review under the State Environmental Policy Act? See WAC 197-11-800. If the proposal is not categorically exempt, a SEPA checklist must accompany the shoreline substantial development application.
For federal actions, compliance with the National Environmental Policy Act is required.

Note to the Applicant: The shoreline permit will not be issued until after the SEPA review process is complete (DNS or final EIS filed with Ecology.)

For more information on SEPA procedures, obtain the SEPA policies of the lead agency (usually the local planning department) or contact:

Washington Department of Ecology
Environmental Review Section
Mail Stop PV-11
Olympia, WA 98504
(206) 459-6000

Section 10/404 Permit (Corps of Engineers Permits):
Does the proposal involve construction within navigable water, i.e., up to the mean high water mark for tidal waters or to the ordinary high water mark for fresh waters? Does the proposal include dredging or placement of fill?

If so, a U.S. Army Corps of Engineers Section 10/404 permit is required. Contact:

U.S. Army Corps of Engineers, Seattle District
Regulatory Functions Branch
P.O. Box C-3755
Seattle, WA 98124-2255

Clean Water Act Section 401 Certification:
Could the proposal result in the discharge of a pollutant in violation of state water quality standards (discharge of dredged materials and fill are included) and is a federal permit required for the proposal?

If so, a Clean Water Act Section 401 certification is required. The Department of Ecology implements the Section 401 requirements, which are typically coordinated through the Section 404 review process. Contact:

Washington Department of Ecology
Water Quality Section
Mail Stop PV-11
Olympia, WA 98504
(206) 459-6038

Hydraulic Project Approval:
Does the project involve construction or other activity below the ordinary high water mark of state waters? Or does the project include an activity that will use, divert, obstruct, or change the natural flow or bed of any state waters?

If so, a Hydraulic Project Approval from the Department of Fisheries or Department of Wildlife is required. Contact the nearest regional office of these agencies for information and an application, or:

Floodplain Management Program:
Is the project within areas regulated by the local comprehensive flood control management plan (usually the base (100 year) floodplain)?

If so, review the proposal for consistency with the development, construction, use and activity standards of the flood damage prevention ordinance. Contact the local planning department for more information.

Aquatic Land Use Authorization or Tideland Lease:
Does the project include construction, use or activities on submerged lands that are under the ownership/jurisdiction of the State Department of Natural Resources?

If so, an aquatic land use authorization or tideland lease may be required. Contact:

Department of Natural Resources
Aquatic Resources Division
John A. Cherberg Building, QW-21
Olympia, WA 98504
(206) 753-5327

Timber Harvesting; Forest Practices Application:
Does the project involve any activity relating to the growing, harvesting or processing of timber, including road construction, thinning, reforestation, fertilization, salvage and brush control?

APPENDIX 6

Sample Exemption Form

EXEMPTION FROM SHORELINE MANAGEMENT ACT SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENT

TO: Name of Applicant_____

Mailing Address_____

Legal Description_____

_____

_____

Section/Range/Township (if platted)

_____

PROJECT: _____

_____

_____

IDENTIFY EXEMPTION SECTION_____

The proposal made by the applicant to undertake the development described above within the waters of the (City/County) and/or its associated wetlands is exempt from the requirement of a substantial development permit.

The proposed development is consistent or inconsistent with

(Check one)

Consistent	Inconsistent	
[ ]	[ ]	Policies of the Shoreline Management Act
[ ]	[ ]	City/County Master Program

_____Date_____

Name of Administrator
Title

APPENDIX 7

Guidelines for Filing a Request for Review with the Shorelines Hearings Board

GUIDELINES FOR FILING A REQUEST FOR REVIEW WITH THE SHORELINES HEARINGS BOARD

If you wish to register a request for review with the Shorelines Hearings Board pursuant to the Shoreline Management Act you must meet the requirements outlined in RCW 90.58.180 and Chapter 461-08 WAC.

THE REQUEST FOR REVIEW MUST BE FILED WITHIN 30 DAYS OF THE "DATE OF FILING" AS DEFINED IN RCW 90.58.140(6). The "date of filing" is the date of receipt by the Department of Ecology for substantial development permits and the date of the transmittal of its decision for variance and conditional use permits.

The request for review should contain:

1. The name, mailing address and telephone number of the appealing party, and of the representative, if any;

2. The appealing party's legal residence or principal place of business within the state;

3. A copy of the application for a substantial development permit which was filed with the local government pursuant to RCW 90.58.140;

4. A copy of the decision or permit appealed from;

5. A short and plain statement showing the grounds upon which the appealing party considers such decision or permit to be unjust or unlawful, and if one of the grounds so asserted is failure to comply with RCW 43.21.030(20(c) (SEPA), six copies of any environmental impact statement if available to appealing party;

6. The relief sought, including the specific nature and extent;

7. A statement that the appealing party has read the request for review and believes the contents to be true, followed by the party's signature and the signature of his representative, if any. If the appealing party is unavailable to sign the request for review, it may be signed by the representative.

The original and one copy of the request shall be filed with the Environmental Hearings Office, 4224-6th Avenue Southeast, Building #2, Rowe Six, Mail Stop PY-21, Lacey, WA 98504; concurrently one copy shall be filed with the Attorney General and the Department of Ecology, c/o Department of Ecology, Shoreland Management Permits, Mail Stop PV-11, Olympia, WA 98504; one copy shall be filed with the local government, and one with the permit applicant if the applicant is not the party requesting review.

The Department and/or the Attorney General may certify the request for review to the Shorelines Hearings Board within 30 days of receipt if the appeal applies to a shoreline permit, and it is filed within the 30 day appeal period, and the issues raised fall within the jurisdiction of the Shoreline Management Act, the local Shoreline Master Program, or the State Environmental Policy Act.

If neither the Department nor the Attorney General certify the request for review, the requester may request review in the Superior Court under any right to review otherwise available to the requester.

APPENDIX 8

Wetland Identification, OHWM, and Association Field Form

Wetland Identification, OHWM and Association Field Form

Date Survey:_____

Wetland Name:_____ Quad:_____

1/4___ 1/4___ S___ T___ R___ 1/4___ 1/4___ S___ T___ R___

1/4___ 1/4___ S___ T___ R___ 1/4___ 1/4___ S___ T___ R___

ning:_____

oject Location: _____

_____

_____

County:_____ City:_____

SMA Water Body (or Watershed):_____

Weather Conditions:_____

Field Lead:_____

Other Members of Field Team: _____

_____

_____

Project Description:_____

_____

_____

_____

I. WETLAND IDENTIFICATION

A. VEGETATION:

1. Forb and Grass Species | Ind-Status* | %Coverage | Rank

1._____ _____ _____ _____

2._____ _____ _____ _____

3._____ _____ _____ _____

4._____ _____ _____ _____

5._____ _____ _____ _____

Do the dominant understory species indicate that the vegetation unit supports hydrophytic vegetation?

Yes____ No_____ Inconclusive_____

2. Shrub Species | Ind-Status* | %Coverage | Rank

1._____ _____ _____ _____

2._____ _____ _____ _____

3._____ _____ _____ _____

4._____ _____ _____ _____

5._____ _____ _____ _____

Do the dominant shrub species indicate that the vegetation unit supports hydrophytic vegetation?

Yes____ No_____ Inconclusive_____

3. Tree Species | Ind-Status* | %Coverage | Rank

1._____ _____ _____ _____

2._____ _____ _____ _____

3._____ _____ _____ _____

4._____ _____ _____ _____

5._____ _____ _____ _____

Do the dominant tree species indicate that the vegetation unit supports hydrophytic vegetation?

Yes____ No_____ Inconclusive_____

* Indicator status for Region 9. See National List of Plant species that occur in Wetlands 1988: Washington, USFWS, 1988.

B. SOILS:

Soil Pit #1:

Series/Phase:_____
Subgroup:_____

1. Is the soil on the hydric soils list? Yes_____ No_____
2. Is the soil a histosol or have a histic epipedon? Yes_____ No_____
3. Is the soil:
   a. Mottled? Yes____ No____ N/A____
      Matrix Color_____ Mottle Color_____
   b. Gleyed? Yes____ No____ Not N/A____
      Grey Color _____
   c. Saturated? Yes_____ No_____
   d. Sulfur Smell? Yes_____ No_____
   e. Entisol with Mottling? Yes_____ No_____
4. Other Indicators:_____
   _____
   _____
   _____
5. Does the sampling indicate the vegetation unit has hydric soils? Yes_____ No_____

Soil Pit #2:

Series/Phase:_____
Subgroup:_____

1. Is the soil on the hydric soils list? Yes_____ No_____
2. Is the soil a histosol or have a histic epipedon? Yes_____ No_____
3. Is the soil:
   a. Mottled? Yes____ No____ N/A____
      Matrix Color_____ Mottle Color_____
   b. Gleyed? Yes____ No____ Not N/A____
      Grey Color _____
   c. Saturated? Yes_____ No_____
   d. Sulfur Smell? Yes_____ No_____
   e. Entisol with Mottling? Yes_____ No_____
4. Other Indicators:_____
   _____
   _____
   _____
5. Does the sampling indicate the vegetation unit has hydric soils? Yes_____ No_____

C. HYDROLOGY

1. Does the area contain standing water? Yes_____ No_____
2. How deep is it? _____
3. Depth to Free-Standing Water in Hole:_____
4. Depth to Saturated Zone/Water Table:_____
5. List other field evidence of inundation or saturation (i.e., water marks, drift lines, relative bank elevations):_____
   _____
   _____

6. Are there obvious sources of water for this site? (i.e., in flow from streams, spring systems, runoff areas, etc.)?_____

7. Where does the water from this site drain to? (i.e., into a lake, river or estuary)_____

Are hydrologic indicators present or would they be expected to be present in the study area during a significant part of the growing season? Yes____ No____ Inclusive____

WETLAND IDENTIFICATION SUMMARY

1. Is a predominance of wetland vegetation present? Yes____ No____ Inclusive____
2. Is hydric soil present? Yes____ No____ Inclusive____
3. Is hydrology present? Yes____ No____ Inclusive____
4. Is the site a wetland? Yes____ No____ Inclusive____
5. Has the site been disturbed? Yes____ No____ How_____

DETERMINATION OF ORDINARY HIGH WATER MARK

1. Is there a mark upon the bank with respect to vegetation? Yes_____ No_____
   Describe:_____
2. If no vegetation cover exists at site, the mark is the projected average elevation of adjacent lines of vegetation? Yes_____ No_____
   Describe:_____
3. If no vegetation close to site, look for a clear mark upon soil or pilings made by deposition of detritus or algae or a clear scour line. Yes____ No____
   Describe:_____
4. If no marks are evident, use nearest gauging data:
   Source:_____
   Elevation:_____
   Data:_____

III. DETERMINATION OF ASSOCIATED WETLANDS

A.

1. Is the area 200 feet from the OHWM of the Shoreline on a horizontal plane?
   Yes_____ No_____
2. Is any part of the wetland within a designated 100 year floodplain of a Shoreline?
   Yes_____ No_____
3. Is any part of the wetland within 200' of the OHWM of a Shoreline?
   Yes_____ No_____
4. To determine wetland continuity, does it have:
   a. Continuous undrained hydric soil (Esp. organic)? Yes_____ No_____
   b. Continuous hydrophytic vegetation? Yes_____ No_____
   c. Direct surface or subsurface hydraulic connection? Yes_____ No_____

B. For **"isolated"** wetlands, the following will be used to determine proximity and influence for association. The degree of influence depends on its significance within the watershed of the Shoreline.

1. Is there evidence of a direct surface or subsurface hydraulic connection between the wetland and the Shoreline? Yes_____ No_____

   Describe:_____

2. Are tidal influences present? Yes_____ No_____
   a. Dunal system.
   b. Beach system.
   c. Presence of salt tolerant vegetation.
   d. Interstitial soil salinity of greater than 0.5 parts per thousand.
   e. Drift lines or piles.
   f. Dendritic channel patterns.

3. Does the wetland **provide** water quality improvement? Yes_____ No_____
   a. Water quality of the Shoreline is vulnerable to degradation (i.e., the shallow area is impounded, has restricted flow, or there is evidence of existing water quality problems).
   b. Specific pollutant source in watershed (point vs. nonpoint) which wetland buffers.

4. Does the wetland retain floodwaters? Yes_____ No_____
   Describe the inlet and outlet:_____
   _____
   _____
   a. What is the elevation difference between the wetland inlet and outlet? (Getting at storage capacity)_____
   b. What is the acreage of the wetland? _____acres
   c. What is the size of the wetland in relation to the acreage of the Wetland Drainage Basin (WDB)? (Significance of wetland size to attenuate peak flood in watershed)? _____%
   d. What is the percentage of wetlands in the drainage basin that are urbanized? _____%
   e. What is the percentage of the wetlands drainage basin that are undergoing vegetation removal or disturbance (e.g., agriculture, forestry, clearing, etc.)? _____%
   f. Hydrologic equilibrium is out of balance in watershed (head cutting, rechannelization, general instability of channels and banks): _____
   g. Location of the wetland in the drainage basin (in relation to the mouth of the basin):
   _____
   _____
   _____
   _____
   _____
   _____

III. DETERMINATION OF ASSOCIATION (continued)

5. Does the wetland provide food chain support? Yes_____ No_____
   a. Plant community diversity (Cowardin class of Palustrine, Forested, Scrub-shrub, Emergent and open water, Estuarine, etc.).
   b. Plant species diversity._____
   c. Faunal diversity._____
   d. Anadromous or wild strain fish spawning, overwintering or rearing habitat.
   _____
   e. Structural diversity - terrestrial (see 4e in policy guidelines under associated wetlands).
   _____
   f. Structural diversity - aquatic (see 4f in policy guidelines under Associated Wetlands.
   _____

6. Does the wetland provide wildlife support? Yes_____ No_____
   a. Habitat available for individual species? _____
   b. Breeding/spawning habitat? _____
   c. Overwintering habitat? _____
7. Does the wetland provide contiguous wildlife corridors? Yes_____ No_____
   Describe: _____
   _____
   _____

C. Is this wetland proximate, based on your above assessment of influence? Yes____ No____
   Why?_____
   _____
   _____
   _____
   _____

GLOSSARY

Accessory use - Any structure or use incidental and subordinate to a primary use or development.

Accretion - The growth of a beach by the addition of material transported by wind and/or water. Included are such shoreforms as barrier beaches, points, spits, hooks and tombolos.

Act - The Shoreline Management Act (Chapter 90.58 RCW and Chapter WAC 173-14-030(1) WAC).

Adjacent lands - Lands adjacent to the shorelines of the state (outside of shoreline jurisdiction). The SMA directs local governments to develop land use controls (i.e. zoning, comprehensive planning) for such lands consistent with the policies of the SMA, related rules and the local shoreline master program (see Chapter 90.58.340 RCW).

Administrator - The City/County Manager, Planning Director, Public Works Director, etc. or his/her designee, charged with the responsibility of administering the shoreline master program.

Agriculture - The cultivation of the soil, production of crops, and/or raising of livestock, including incidental preparation of these products for human use.

Alluvium - Unconsolidated fragmented material deposited by streams in river beds, floodplains, lakes, fans at the foot of mountain slopes and estuaries.

Anadromous fish - Species, such as salmon, which are born in fresh water, spend a large part of their lives in the sea and return to freshwater rivers and streams to procreate.

Appurtenance - A structure or development which is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and also of the perimeter of any marsh, bog, or swamp. (On a state-wide basis, normal appurtenances include a garage, deck, driveway, utilities, fences and grading which does not exceed two hundred fifty cubic yards [except to construct a conventional drainfield]) (see WAC 173-14-040(1g)).

Aquaculture - The cultivation of fish, shellfish, and/or other aquatic animals or plants, including the incidental preparation of these products for human use.

Archaeological - Having to do with the scientific study of material remains of past human life and activities.

Average grade level - The average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure; provided that in case of structures to be built over water, average grade level shall be the elevation of ordinary high water. Calculation of the average grade level shall be made by averaging the elevations at the center of all exterior walls of the proposed building or structure (WAC 173-14-030(3)).

Backshore - The accretion or erosion zone, located landward of the line of ordinary high tide, which is normally wetted only by storm tides. It may take the form of a more or less narrow storm berm (ridge of wave heaped sand and/or gravel) under a bluff or it may constitute a broader complex of berms, marshes, meadows, or dunes landward of the line of ordinary high tide. It is part of the littoral drift process along its seaward boundary.

Beach - The zone of unconsolidated material that is moved by waves, wind and tidal currents, extending landward to the coastline.

Beach enhancement/restoration - Process of restoring a beach to a state more closely resembling a natural beach, using beach feeding, vegetation, drift sills and other nonintrusive means as applicable.

Beach feeding - Process of replenishing a beach by delivery of materials dredged or excavated elsewhere.

Beach scarp - A steep slope produced by wave erosion.

Benthic organism - Organisms that live in or on the bottom of a body of water.

Berm - A linear mound or series of mounds of sand and/or gravel generally paralleling the water at or landward of the line of ordinary high tide. Also, a linear mound used to screen an adjacent activity, such as a parking lot, from transmitting excess noise and glare.

Best available technology (BAT) - The most effective method, technique, or product available which is generally accepted in the field, and which is demonstrated to be reliable, effective and preferably low maintenance.

Bioassay - Bioassays are laboratory tests involving exposure of select organisms to a sampling of material to determine the potential for acute or chronic effects from such exposure. Bioassays are typically run on potentially contaminated materials proposed for in-water disposal, however, testing protocols are also available to assess dredged material proposed for upland disposal.

Biofiltration system - A storm water or other drainage treatment system that utilizes as a primary feature the ability of plant life to screen out and metabolize sediment and pollutants. Typically, biofiltration systems are designed to include grassy swales, retention ponds and other vegetative features.

Biota - The animals and plants that live in a particular location or region.

Boathouse - A structure designed for storage of vessels located over water or in upland areas. Boathouses should not be confused with "houseboats".

Boat launch or ramp - Graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device.

Bog - A wet, spongy, poorly drained area which is usually rich in very specialized plants, contains a high percentage of organic remnants and residues and frequently is associated with a spring, seepage area, or other subsurface water source. A bog sometimes represents the final stage of the natural process of eutrophication by which lakes and other bodies of water are very slowly transformed into land areas.

Breakwater - Offshore structure aligned parallel to shore, sometimes shore-connected, that provides protection from waves.

Buffer area - A parcel or strip of land that is designed and designated to permanently remain vegetated in an undisturbed and natural condition to protect an adjacent aquatic or wetland site from upland impacts, to provide habitat for wildlife and to afford limited public access.

Bulkhead - A solid wall erected generally parallel to and near the ordinary high water mark for the purpose of protecting adjacent uplands from waves or current action.

CERCLA - Comprehensive Environmental Response, Compensation, and Liability Act ("Superfund"); 1986 amendments are known as Superfund Amendments and Reauthorization Act or SARA.

Channel - An open conduit for water either naturally or artificially created, but does not include artificially created irrigation, return flow, or stockwatering channels (WAC 173-14-030(8b)). See also stream.

Chord diking - A means of utilizing small dikes or berms setback from the streamway of a river far enough to allow for the natural meandering and side channel formation to occur within the diked off corridor.

Clean Water Act - The primary federal law providing water pollution prevention and control; previously known as the Federal Water Pollution Control Act. See 33 USC 1251 et seq.

CFR - Code of Federal Regulations.

Clearing - The destruction or removal of vegetation ground cover, shrubs and trees including, but not limited to, root material removal and/or topsoil removal.

Coastline - The line where terrestrial processes give way to marine processes, tidal currents, wind waves, etc.

Commercial feedlot - see Feedlot.

Community structure - A building, dock, or other structure which is intended for the common use of the residents of a particular subdivision or community. It is not intended to serve as a public facility.

Cottage industry or business (home occupation) - A commercial or light industrial use which is commonly conducted within a residence and/or appurtenance, which does not require the construction of any new structures, parking areas, signs, etc. and which does not generate significant additional traffic, noise, fumes, or glare.

Covered moorage - Boat moorage, with or without walls, that has a roof to protect the vessel.

Critical saltwater habitats - Kelp beds (members of the brown algal family Laminariales including Alaria marginata, Alaria nana, Alaria tenuifolia, Egregia menziesii, Eisenia arborea, Pterygophora californica, Agarum cribosum, Agarum fimbriatum, Costaria costata, Cymathere triplicata, Hedophyllum sessile, Laminaria spp., Pleurophycus gardneri, Dictyoneuropsis reticulata, Dictyoneurum californicum, Lessioniopsis littoralis, Macrocystis integrifolia, Nereocystis luetkeana and Postelsia plamaeformis), eelgrass beds (Zostera spp.), surf smelt (Hypomesus pretiosus) spawning beds, Pacific herring (Clupea harengus pallasi) spawning beds, Pacific sand lance (Ammodytes hexapterus) spawning beds, rock sole (Lepidopsetta bilineata) spawning beds, rockfish (Sebastes spp.) settlement and nursery areas, and lingcod (Ophiodon elongatus) settlement and nursery areas.

CZMP - Coastal Zone Management Plan.

Degrade - To scale down in desirability or salability, to impair in respect to some physical property or to reduce in structure or function.

Delta - see River Delta.

Development - A use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters of the state subject to Chapter 90.58 RCW at any state of water level (RCW 90.58.030(3d)).

DNS - Determination of Nonsignificance, under SEPA.

Dolphin - A cluster of piles bound together.

Downdrift - The direction of movement of beach materials.

Dredge spoil - The material removed by dredging. Same as Dredge Material.

Dredging - Excavation or displacement of the bottom or shoreline of a water body. Dredging can be accomplished with mechanical or hydraulic machines. Most dredging is done to maintain channel depths or berths for navigational purposes; other dredging is for shellfish harvesting or for cleanup of polluted sediments.

Drift sector - A particular reach of marine shore in which littoral drift may occur without significant interruption, and which contains any and all natural sources of such drift, and also any accretion shoreform(s) accreted by such drift. Each normal drift sector contains these shore process elements: feeder bluff or estuary, driftway, littoral drift and accretion shoreform.

Drift sills - Small groins which hold sediments in place without blocking longshore drift.

Driftway - That portion of the shore process corridor, primarily that lower backshore and the upper intertidal area, through which sand and gravel are transported by the littoral drift process. It is the critical link between the feeder bluff and the accretion shoreform.

Dune - A hill or ridge of sand piled up by the wind and/or wave action.

EA - Environmental Assessment, under SEPA/NEPA.

Ecology (WDOE) - The Washington State Department of Ecology. Use of "Ecology" or "WDOE" is preferred over "DOE" to avoid confusion with the federal Department of Energy.

EIS - Environmental Impact Statement.

Emergency - An unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the master program. Emergency construction is construed narrowly as that which is necessary to protect property from the elements (RCW 90.58.030(3eiii) and WAC 173-14-040(1d)).

Enhancement - Alteration of an existing resource to improve or increase its characteristics and processes without degrading other existing functions. Enhancements are to be distinguished from resource creation or restoration projects.

Erosion - The wearing away of land by the action of natural forces.

Estuary - The zone or area of water in which freshwater and saltwater mingle and water is usually brackish due to daily mixing and layering of fresh and salt water. Estuarine shores are rich in aquatic and other bird and animal life, and in their natural condition are the most productive of all shoreline habitats in terms of the marine food chain.

Exemption - Certain specific developments as listed in WAC 173-14-040 are exempt from the definition of substantial developments are therefore exempt from the substantial development permit process of the SMA. An activity that is exempt from the substantial development provisions of the SMA must still be carried out in compliance with policies and standards of the Act and the local master program. Conditional use and/or variance permits may also still be required even though the activity does not need a substantial development permit (RCW 90.58.030(3e); WAC 173-14-030(6) and -040).

Extreme low tide - means the lowest line on the land reached by a receding tide (RCW 90.58.030(2a)).

Factory built housing - A single family residential structure constructed in a factory of factory assembled parts and transported to the building site in whole or in units which meets the requirements of the Uniform Building Code. The completed structure is not a mobile/manufactured home.

Fair market value - The expected price at which the development can be sold to a willing buyer. For developments which involve nonstructural operations such as dredging, drilling, dumping, or filling, the fair market value is the expected cost of hiring a contractor to perform the operation or where no such value can be calculated, the total of labor, equipment use, transportation and other costs incurred for the duration of the permitted project (WAC 173-14-030(7)).

FCAAP - Flood Control Assistance Account Program.

FCZMA - Federal Coastal Zone Management Act.

Feeder bluff, erosional bluff - Any bluff (or cliff) experiencing periodic erosion from waves, sliding or slumping, whose eroded earth, sand or gravel material is naturally transported (littoral drift) via a driftway to an accretion shoreform. These natural sources of beach material are limited and vital for the long term stability of driftways and accretion shoreforms.

Feedlot - An enclosure or facility, of any size, used or capable of being used for confinement feeding of livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or pasture for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations (RCW 90.58.030(3eiv); WAC 173-14-040(1e)).

Fetch length - The horizontal distance along open water over which the wind blows and generates waves.

Floating home - A structure designed and operated substantially as a permanently based over water residence. Floating homes are not vessels and lack adequate self-propulsion and steering equipment to operate as a vessel. They are typically served by permanent utilities and semipermanent anchorage/moorage facilities. See also houseboat.

Floodplain - Synonymous with 100-year floodplain. The land area susceptible to being inundated by stream derived waters with a 1 percent chance of being equaled or exceeded in any given year. The limits of this area are based on flood regulation ordinance maps or a reasonable method that meets the objectives of the SMA (WAC 173-22-030(2)).

Floodway - Those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetative ground cover conditions. The floodway does not include lands that can

reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state. The limits of the floodway are based on flood regulation ordinance maps or by a reasonable method which meets the objectives of the SMA (RCW 90.58.030(2g); WAC 173-22-030(3)).

FONSI - Finding of No Significant Impact, under NEPA.

Foreshore - In general terms, the beach between mean higher high water and mean lower low water.

Forest practices - Any activity conducted on or directly related to forest land and relating to growing, harvesting, or processing timber. These activities include but are not limited to: road and trail construction, final and intermediate harvesting, precommercial thinning, reforestation, fertilization, prevention and suppression of disease and insects, salvage of trees and brush control. See WAC 222-16-010(21).

Gabions - Structures composed of masses of rocks, rubble or masonry held tightly together usually by wire mesh so as to form blocks or walls. Sometimes used on heavy erosion areas to retard wave action or as foundations for breakwaters or jetties.

Grading - The physical manipulation of the earth's surface and/or drainage pattern in preparation for an intended use or activity.

Grassy Swale - A vegetated drainage channel that is designed to remove various pollutants from storm water runoff through biofiltration.

Guidelines - Those provisions contained in Chapter 173-16 WAC entitled "Shoreline Management Act Guidelines for Development of Master Programs". The Guidelines were adopted to implement the policy of Chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. This state law also provides criteria to local governments and the Washington State Department of Ecology in developing and amending master programs.

Groin (also referred to as a spur dike or rock weir) - A barrier-type structure extending from the backshore or stream bank into a water body for the purpose of the protection of a shoreline and adjacent upland by influencing the movement of water and/or deposition of materials.

Habitat - The place or type of site where a plant or animal naturally or normally lives and grows.

Height - The distance measured from the average grade level to the highest point of a structure: Provided, That television antennas, chimneys and similar appurtenances shall not be used in calculating height, except where it obstructs the view of a substantial number of residences on areas adjoining such shorelines (or the master program provides otherwise):

Provided further, That temporary construction equipment is excluded in this calculation (WAC 173-14-030(9)).

High energy riverine - This term includes river systems with dry summer/heavy winter flowing, and excludes flash flooding rivers with extreme event channel formation.

Hook - A split or narrow cape of sand or gravel which turns landward at it's outer end.

Houseboat - A vessel, principally used as an over water residence. Houseboats are licensed and designed for use as a mobile structure with detachable utilities or facilities, anchoring and the presence of adequate self-propulsion and steering equipment to operate as a vessel. Principal use as an over-water residence means occupancy in a single location, for a period exceeding two months in any one calendar year. This definition includes liveaboard vessels.

HPA - Hydraulic Project Approval. The permit issued by the Washington State Departments of Fisheries or Wildlife pursuant to the State Hydraulic Code Chapter 75.20.100-140 RCW.

Hydric soils - Generally, soils which are, or have had a history of being, wet long enough to periodically produce anaerobic conditions, thereby influencing the growth of plants (WAC 173-22-030(5)).

Hydrophytes - Those plants capable of growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (WAC 173-22-030(5)).

In-kind replacement - To replace wetlands, biota or other organisms with substitute flora or fauna whose characteristics closely match those destroyed, displaced or degraded by an activity.

Interested party - Synonymous with "party of record", and means all persons who have notified local government of their desire to receive a copy of the final order on a permit under WAC 173-14-070 (WAC 173-14-030(12)).

Intertidal - The substratum from the extreme low water of spring tides to the upper limit of spray or influence of ocean-driven salts. It includes all land that is sometimes submerged, but sometimes exposed to air. Source: M. N. Dethier, *A Marine and Estuarine Habitat Classification System for Washington State* 10 (Department of Natural Resources, Washington Natural Heritage Program, 1990).

Jetty - A structure(s) usually projecting out into the sea at the mouth of a river for the purpose of protecting a navigation channel, a harbor or to influence water currents.

Lacustrine (also lacustrian) - Of, on, or pertaining to lakes.

Lake - A body of standing water in a depression of land or expanded part of a river, including reservoirs, of twenty (20) acres or greater in total area. A lake is bounded by the ordinary high water mark or, where a stream enters a lake, the extension of the elevation of the lake's

ordinary high water mark within the stream (RCW 90.58.030(1d); WAC 173-20-030; WAC 173-22-030(4)).

Levee - A large dike or embankment, often having an access road along the top, which is designed as part of a system to protect land from floods.

Liberal construction - A legal concept instructing parties interpreting a statute to give an expansive meaning to terms and provisions within the statute. The goal of liberal construction is to give full effect in implementing a statutes requirements. See RCW 90.58.900.

Littoral - Living on, or occurring on, the shore.

Littoral drift - The mud, sand, or gravel material moved parallel to the shoreline in the nearshore zone by waves and currents.

Liveaboard vessel - See "houseboat".

Marine travel lift - A mechanical device that can hoist vessels off trailers and transport them into the water. Often associated with dry land moorage.

Marine railway - A set of steel rails running from the upland area into the water upon which a cart or dolly can carry a boat to be launched.

Marshes - Soft, wet area periodically or continuously flooded to a shallow depth, usually characterized by a particular subclass (monocotyledons) of grasses, cattails and other low plants.

Marshes, Bogs and Swamps - Lands transitional between terrestrial and aquatic systems where saturation with water is the dominant factor determining plant and animal communities and soil development. Such lands must have one or more of the following attributes: a) at least periodically, the land supports predominately hydrophytes; and/or b) the substrate is predominately undrained hydric soil (WAC 173-22-030 (5)). See also hydrophyte, hydric soil.

Mean higher high tide (MHHT) - The arithmetic mean of the higher of two daily high tides calculated from the most recent nineteen-year tidal cycle.

Merchantable trees - All live trees 8 inches in diameter at breast height (DBH) and larger unless documentation of current, local market conditions are submitted and accepted by the local jurisdiction indicating nonmarketablility. "Merchantable trees" shall not include trees smaller than 4 inches DBH.

Midden - An ancient refuse heap. Since much of what archaeologists have discovered about the past is based on what man has lost or discarded as no longer useful, middens are a very valuable source of material.

Mitigation - The process of avoiding, reducing, or compensating for the environmental impact(s) of a proposal. See WAC 197-11-768.

Mobile/manufactured home - A residential unit on one or more chassis for towing to the point of use and designed to be used with a foundation as a single family dwelling unit on a year around basis. A commercial coach, recreational vehicle or motor home are not mobile/manufactured homes.

Mooring buoy - A floating object anchored to the bottom of a water body that provides tie up capabilities for vessels.

Mulching - The addition of organic materials (e.g. woodchips, sawdust, straw, grass clippings, or compost, etc.) to bare soils or in planting beds.

Multi-family dwelling (or residence) - A building containing two or more dwelling units, including but not limited to duplexes, apartments and condominiums.

Natural riparian habitat corridor - The streamside environment designed and maintained primarily for fisheries and wildlife habitat, water quality improvements and secondarily for flood control works, while allowing controlled public access to avoid damage to the resource.

NEPA - National Environmental Policy Act. NEPA requires federal agencies to consider environmental factors when making decisions, especially for development proposals of a significant scale. As part of the NEPA process, EISs are prepared and public comment is solicited.

NFIP - National Flood Insurance Program.

NOAA - National Oceanic and Atmospheric Administration.

Nonconforming development - A shoreline use or structure which was lawfully constructed or established prior to the effective date of the applicable SMA/SMP provision, and which no longer conforms to the applicable shoreline provisions (WAC 173-14-055(1)).

Normal maintenance - Those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition (WAC 173-14-040(1b)). See also normal repair.

Normal protective bulkhead - A bulkhead, common to single-family residences, constructed at or near the ordinary high water mark to protect an existing single-family residence, and which sole purpose is for protecting land from erosion, not for the purpose of creating new land (WAC 173-14-040(1c)).

Normal repair - To restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment (WAC 173-14-040(1b)). See also normal maintenance.

OCS - Outer Continental Shelf.

Off-site replacement - To replace wetlands or other shoreline environmental reources away from the site on which a resource has been impacted by a regulated activity.

OHWM, Ordinary High Water Mark - That mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: Provided, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water. See RCW 90.58.030(2)(b) and WAC 173-22-030(6).

On-site replacement - To replace wetlands or other shoreline environmental reosurces at or adjacent to the site on which a resource has been impacted by a regulated activity.

Out-of-kind replacement - To replace wetlands or other shoreline environmental resources with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity.

Oil separator - Specialized catch basins that are designed to trap oil and other materials lighter than water in the basin while allowing the water to escape through the drainage system. Commonly employed in parking lots and streets.

Perched beach - A beach or fillet of sand retained above the otherwise normal profile level by a submerged dike or sill.

Percolation - Water seepage through spaces between sediment particles or through porous structures.

Perforated pipe - Plastic pipe containing an array of holes used to facilitate drainage of otherwise impervious soils.

Periodic - Occurring at regular intervals.

Person - An individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated (RCW 90.58.030(1d)).

Pocket beach - An accretion beach which does not depend on littoral drift accretion. It depends on the erosion of immediately adjacent sources. In rare instances a pocket beach may also be a berm beach.

Point - A low profile shoreline promontory of more or less triangular shape, the top of which extends seaward. A point may be the wavecut shelf remnant of a headland bluff or a purely accretional deposit which began as a hooked spit and became a point by subsequently closing

the lagoon gap between the headland and the tip of the hook. Points are characterized by converging berms that normally enclose a lagoon, marsh, or meadow, depending on the point's stage of development.

Port - Any harbor area which is largely devoted to marine commerce, shipping and cargo handling or a special purpose unit of local government created for the purpose of managing port related lands, facilities and activities.

Practicable alternative - An alternative that is available and capable of being carried out after taking into consideration short-term and long-term cost, options of project scale and phasing, existing technology and logistics in light of overall project purposes. It may include an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

Public interest - The interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected such as an effect on public property or on health, safety, or general welfare resulting from a use or development (WAC 173-14-030(14)).

RCW - Revised Code of Washington.

Recreational vehicle - A vehicle licensed, designed and operated for recreational purposes as temporary living quarters, which has a means of self-propulsion or is readily towable by a car or pickup truck, and is not used as a residence in any one location for extended periods of time (i.e. more than three months).

Residential development - Development which is primarily devoted to or designed for use as a dwelling(s).

Restoration - To revitalize or reestablish characteristics and processes of a wetland or habitat diminished or lost by past alterations, activities, or catastrophic events.

Revetment - Facing of stone, concrete, etc., built to protect a scarp, embankment, or shore structure against erosion by waves of currents.

Riparian - Of, on, or pertaining to the banks of a river.

Riparian management zone - A specified area alongside a shoreline where specific measures are set out in the Forest Practice Regulations to protect water quality and fish and wildlife habitat. The zone is a minimum of 25 feet wide, measured horizontally from the ordinary high water mark, and can be up to 100 feet wide depending on the width of the stream and the width of the wetland vegetation adjacent to the stream (see WAC 222-30).

Riprap - A layer, facing, or protective mound of stones placed to prevent erosion, scour, or sloughing of a structure or embankment; also, the stone so used.

River delta - Those lands formed as an aggredational feature by stratified clay, silt, sand and gravel deposited at the mouths of streams where they enter a quieter body of water. The upstream extent of a river delta is that limit where it no longer forms distributary channels (WAC 173-22-030(7)).

Runoff - Water that is not absorbed into the soil but rather flows along the ground surface following the topography.

Salmon and Steelhead Habitats - Gravel bottomed streams, creeks, and rivers used for spawning; streams, creeks, rivers, side channels, ponds, lakes, and wetlands used for rearing, feeding, and cover and refuge from predators and high water; streams, creeks, rivers, estuaries, and shallow areas of saltwater bodies used as migration corridors; and salt water bodies used for rearing, feeding, and refuge from predators and currents.

Salt tolerant vegetation - Vegetation which is tolerant of interstitial soil salinities greater than or equal to 0.5 parts per thousand.

Scarification - Loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

Seawall - A structure separating land and water areas primarily to prevent erosion and other damage by wave action. Generally more massive and capable of resisting greater wave forces than a bulkhead.

Seaward - To or toward the sea.

Sediment - The fine grained material deposited by water or wind.

Selective timber cutting - Removing individual trees scattered throughout the subject area. The unharvested trees should be as evenly distributed as possible throughout the shoreline area and should be representative of the species and size classes of the preharvest stand.

SEPA (State Environmental Policy Act) - SEPA requires state agencies, local governments and other lead agencies to consider environmental factors when making most types of permit decisions, especially for development proposals of a significant scale. As part of the SEPA process, EISs may be required to be prepared and public comments solicited.

Setback - A required open space, specified in shoreline master programs, measured horizontally upland from and perpendicular to the ordinary high water mark.

Shoreline environment designations - The categories of shorelines established by local shoreline master programs in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas. The basic recommended system classifies shorelines into four distinct environments (natural, conservancy, rural and urban). See WAC 173-16-040(4).

Shoreline jurisdiction - The term describing all of the geographic areas covered by the SMA, related rules and the applicable master program. Also, such areas within a specified local government's authority under the SMA. See definitions of "shorelines", "shorelines of the state", "shorelines of state-wide significance" and "wetlands, jurisdictional".

Shoreline Master Program (SMP) - The comprehensive use plan and related use regulations which are used by local governments to administer and enforce the permit system for shoreline management. Master programs must be developed in accordance with the policies of the SMA, be approved and adopted by the state, and be consistent with the rules (WACs) adopted by Ecology.

Shoreline permit - A substantial development, conditional use, revision, or variance permit or any combination thereof (WAC 173-14-030(13)).

Shorelines - All of the water areas of the state, including reservoirs and their associated uplands, together with the lands underlying them, except those areas excluded under RCW 90.58.030(2)(d). See RCW 90.58.030 (2)(d) and WAC 173-18, 173-19 and 173-22.

Shorelines Hearings Board (SHB) - A six member quasi-judicial body, created by the SMA, which hears appeals by any aggrieved party on the issuance of a shoreline permit, enforcement penalty and appeals by local government on Ecology approval of master programs, rules, regulations, guidelines or designations under the SMA. See RCW 90.58.170; 90.58.180; and WAC 173-14-170; 173-14-174.

Shorelines of state-wide significance - A select category of shorelines of the state, defined in RCW 90.58.030(2)(e), where special policies apply. See RCW 90.58.020.

Shorelines of the state - Shorelines and shorelines of state-wide significance.

Sign - A board or other display containing words and/or symbols used to identify or advertise a place of business or to convey information. Excluded from this definition are signs required by law and the flags of national and state governments.

Single-family residence (SFR) - A detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance (WAC 173-14-040(1g)).

Slash - The organic debris which is produced by logging operations.

SMA - The Shoreline Management Act of 1971, Chapter 90.58 RCW, as amended.

Soil bioengineering - An applied science that combines structure, biological and ecological concepts to construct living structures that stabilizes the soil to control erosion, sedimentation and flooding using live plant materials as a main structural component.

Spit - An accretion shoreform which extends seaward from and parallel to the shoreline. They are usually characterized by a wave-built berm on the windward side and a more gently sloping, muddy or marshy shore on the leeward side. A curved spit is normally called a hook.

Stream - A naturally occurring body of periodic or continuously flowing water where: a) the mean annual flow is greater than twenty cubic feet per second and b) the water is contained within a channel (WAC 173-22-030(8)). See also channel and tidal water.

Streamway - A general term describing the bed and banks of a stream.

Structure - A permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above or below the surface of the ground or water, except for vessels (WAC 173-14-03015)).

Subdivision - The division or redivision of land, including short subdivision for the purpose of sale, lease or conveyance.

Substantial development - Any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state; except as specifically exempted pursuant to RCW 90.58.030(3e) and WAC 173-14-040. See also definition of "development" and "exemption".

Subtidal - Any substratum that is constantly submerged. Source: M. N. Dethier, *A Marine and Estuarine Habitat Classification System for Washington State* 11 (Department of Natural Resources, Washington Natural Heritage Program, 1990).

Surge plains - Riverine areas where salt water meets freshwater, extending upstream as far as tidal influence.

Swamp - A depressed area flooded most of the year to a depth greater than that of a marsh and characterized by areas of open water amid soft, wetland masses vegetated with trees and shrubs. Extensive grass vegetation is not characteristic.

Terrestrial - Of or relating to land as distinct from air or water.

Tidal flats - Marshy or muddy areas of the seabed which are covered and uncovered by the rise and fall of tidal water.

Tidal prism - The volume of water present between mean low and mean high tide.

Tidal range - The difference in height between consecutive high- and low- tides.

Tidal water - Includes marine and estuarine waters bounded by the ordinary high water mark. Where a stream enters the tidal water, the tidal water is bounded by the extension of the elevation of the marine ordinary high water mark within the stream (WAC 173-22-030(9)).

Tidelands - Land on the shore of marine water bodies between the line of ordinary high tide and the line of extreme low tide.

Tombolo - A causeway-like accretion spit that connects an offshore rock or island to the main shore, or to another island.

Undrained hydric soils - Those soils which are wet long enough to periodically produce anaerobic conditions, thereby influencing the growth of plants. See WAC 173-22-030(5).

Upland - Generally described as the dry land area above and landward of the OHWM.

USC - United States Code.

Variance - A means to grant relief from the specific bulk, dimensional or performance standards specified in the applicable master program. Variance permits must be specifically approved, approved with conditions, or denied by Ecology (See WAC 173-14-150).

Vessel - Ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with normal public use of the water (WAC 173-14-030(18)).

WAC - Washington Administrative Code.

Water-bar - A diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which cause soil movement and erosion.

Water-dependent - A use or a portion of a use which can not exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities and sewer outfalls.

Water-enjoyment - A recreational use, or other use facilitating public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through the location, design and operation assures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment. Primary water-enjoyment uses may include, but are not limited to, parks, piers and other improvements facilitating public access to shorelines of the state; and general water-enjoyment uses may include but are not limited to, restaurants, museums, aquariums, scientific/ecological reserves, resorts and mixed-use commercial; PROVIDED, that such uses conform to the above water-enjoyment specifications and the provisions of the master program.

Water-oriented - Refers to any combination of water-dependent, water-related, and/or water enjoyment uses and serves as an all encompassing definition for priority uses under the SMA.

Non-water-oriented serves to describe those uses which have little or no relationship to the shoreline and are not considered priority uses under the SMA. Examples include professional offices, automobile sales or repair shops, mini-storage facilities, multi-family residential development, department stores and gas stations.

Water-related - A use or a portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

1. of a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water or,

2. the use provides a necessary service supportive of the water-dependent commercial activities and the proximity of the use to its customers makes its services less expensive and/or more convenient. Examples include manufacturers of ship parts large enough that transportation becomes a significant factor in the products cost, professional services serving primarily water-dependent activities and storage of water-transported foods. Examples of water-related uses may include warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker and log storage.

Wave diffraction - The phenomenon by which wave energy passes around barriers (such as breakwaters and jetties) and through narrow openings to spread into sheltered areas.

Wave direction - The direction from which waves approach an observer.

Wetlands -

**NOTE: For regulatory purposes, local governments are encouraged to make a distinction in their master programs between the definition of wetlands used in the SMA (that technically includes dry upland areas), and biological wetlands that address only associated marshes, bogs, and swamps.*

In addition, when defining wetlands as used in a master program, local government needs to be clear as to the extent of SMP jurisdiction in floodplain areas. RCW 90.58.030(2)(f) gives discretion to local government to "determine that portion of the one-hundred-year floodplain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom". The definition of jurisdictional wetlands presented below represents the minimum allowable area that must be covered by a master program. If coverage of the entire floodplain area is desired, the jurisdictional wetland definition should be revised to read "... as measured on a horizontal plane from the ordinary high water mark; contiguous floodplain areas; and all marshes, bogs and swamps...". Local government must either cover the minimum required (see definition below), the maximum allowable (the entire floodplain), or something (specifically spelled out) in between.

Wetlands, jurisdictional - Those areas extending landward for two hundred feet in all directions, as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all marshes, bogs and swamps and river deltas associated with the streams, lakes and tidal waters subject to the Shoreline Management Act (RCW 90.58). For the purposes of this master program, the term "associated wetlands" includes biological wetlands and other dry upland areas contained within SMA jurisdiction. This definition has the same meaning as "wetlands or wetland areas" as defined in RCW 90.58.030(2)(f).

Wetlands, biological - Those areas defined in WAC 173-22-030(5) as "mashes, bogs, and swamps". For the purposes of this master program, the terms "biological wetland" or "marsh, bog, or swamp" are used as a subcategory of "jurisdictional wetlands" and are analogous to the term "wetland", as commonly used.

Wetland mitigation - Avoiding and minimizing adverse impacts to wetlands, including, in the following order of preference:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action;

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and

(5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.

Wind rose - A diagram illustrating the frequency, velocity and direction of wind at a specific location.

Zoning - To designate by ordinance, including maps, areas of land reserved and regulated for specific land uses.

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